

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1966
Ombudsman ID	1002613-O
Date of the department's reports	6 March 2017 and 2 September 2017
Total days in detention	912 (at date of the department's latest report)

Detention history

3 March 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
7 May 2015	Transferred to Christmas Island IDC.
1 October 2015	Transferred to Yongah Hill IDC.
2 January 2016	Removed from Australia to Country A.
4 January 2016	Returned to Australia after he was refused entry to Country A by the authorities of Country A due to document concerns. He was re-detained under s 189(1) and transferred to Brisbane Immigration Transit Accommodation.
5 January 2016	Transferred to Yongah Hill IDC.
14 March 2016 – 29 June 2016	Transferred four times between Villawood IDC and Yongah Hill IDC.
7 June 2017	Transferred to Villawood IDC.

Recent visa applications/case progression

<p>Mr X arrived in Australia on a tourist visa on 13 July 1996. He was subsequently granted a Temporary Skilled visa on 15 September 1997 and a bridging visa on 8 March 2000.</p> <p>On 30 August 2000 Mr X's application for a Permanent Skilled visa was refused. His bridging visa ceased on 4 October 2000 and he remained in the community as an unlawful non-citizen.</p>	
17 March 2015	Lodged a Protection visa application with an associated bridging visa application.
23 March 2015	Associated bridging visa application found to be invalid.
24 March 2015	Applied to the Migration Review Tribunal (MRT) for merits review of the negative bridging visa outcome. The MRT affirmed the original decision on 2 April 2015.
15 July 2015	Protection visa application refused.

22 July 2015	Applied to the Administrative Appeals Tribunal (AAT) ¹ for merits review of his negative Protection visa outcome. The AAT affirmed the original decision on 18 September 2015.
21 August 2015, 29 November 2016 and 17 January 2017	Lodged three bridging visa applications, all of which were refused. Mr X applied to the AAT for merits review on two occasions and the AAT affirmed the original decisions.
22 October 2015 and 12 December 2015	Requested ministerial intervention under s 417 for the Minister to substitute a more favourable decision. The Minister declined to intervene on both occasions.
10 November 2015	Applied to the Federal Circuit Court (FCC) for judicial review of the AAT's decision to affirm the refusal of his Protection visa application. Mr X withdrew from proceedings on 15 December 2015.
23 December 2015	Found not to meet the guidelines for referral to the Minister under ss 417 and 48B.
7 March 2016	Issued with a Criminal Justice Stay Certificate (CJSC).
22 March 2016	A delegate of the Minister declined to grant Mr X a Criminal Justice Stay visa.
2 September 2017	The Department of Home Affairs (the department) advised that as Mr X has no matters before the department, the courts or tribunals, he is on a removal pathway. Mr X remains subject to a CJSC.

Criminal history

September 2017	Convicted of a fraud related offence and sentenced to three years and three months imprisonment with a non-parole period of one year and six months. Mr X's sentence was taken to have commenced on 3 February 2016 and following the expiry of his non-parole period on 2 August 2017 he was taken to have been released on supervised parole. Mr X remained in an immigration detention facility for the duration of his custodial sentence.
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Health and welfare

International Health and Medical Services (IHMS) advised that a psychiatrist reported that Mr X displayed symptoms of detention fatigue during a mental health screening in September 2016. IHMS advised that Mr X was feeling stressed, overwhelmed and hopelessness in relation to the uncertainty of his immigration status. The psychiatrist recommended that Mr X continue to attend psychological counselling.
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Other matters

On 6 March 2017 the department advised that Mr X had reported that his brother resides in Australia.
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¹ On 1 July 2015 the MRT and Refugee Review Tribunal were merged into the AAT.

Information provided by Mr X

During an interview with Ombudsman staff on 24 May 2017 Mr X advised that his case was confusing and appeared to be at an impasse. Mr X said that he had been removed from Australia but was turned back at the border of Country A. He claimed that the border officials of Country A had been suspicious of him because he was accompanied by escorts and immigration officers and they did not believe that he had not been charged with a criminal offence. He advised that a month after he had returned to Australia a criminal case was brought against him.

Mr X said that he had been advised by the department that he could only apply for a Protection visa and could not be sponsored by a family member. He said that he had asked if he could apply for a bridging visa but was told that this was not possible. Mr X believed that he should be able to apply for any visa because his attempted removal meant that he had left Australia. He said that the Australian Federal Police had advised that they saw no problem with him being granted a Criminal Justice Stay visa but he was awaiting the department's decision.

Mr X advised that he was receiving legal assistance from a barrister in Sydney where his criminal case was being heard and had requested to be transferred to Sydney.

Mr X reported that he was suffering from detention fatigue and had lost his sense of self-worth. He said that that he participated in activities and helped other detainees to complete their paperwork. He was unhappy with the arrangements for celebrating a religious occasion at Yongah Hill IDC and felt that they had been disrespectful. He also said that there was a lack of spiritual guidance within the immigration detention facilities.

Mr X advised that all of his family lived in Australia. He said that he regularly communicated with them, but did not talk to his wife because it was hard to explain to her what was happening to him.

Case status

Mr X was detained on 3 March 2015 after living unlawfully in the community and has remained in an immigration detention facility for a cumulative period of more than two and a half years.

On 15 July 2015 Mr X's Protection visa application was refused and on 18 September 2015 the AAT affirmed the decision. On 10 November 2015 Mr X applied to the FCC for judicial review of this decision and on 15 December 2015 he withdrew from proceedings.

Mr X remains subject to a CJSC, has no matters before the department, the courts or tribunals and is on a removal pathway.