

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	1967
Ombudsman ID	1002647-O
Date of department's reports	24 April 2017 and 23 October 2017
Total days in detention	913 (at date of departments latest report)

Detention history

24 April 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa. He was transferred to Facility B.
2 February 2017	Transferred to Facility C.
8 March 2017	Transferred to Facility D.

Visa applications/case progression

Mr X arrived in Australia on 16 September 2007 on a partner visa.	
15 September 2014	Mr X's partner visa ceased and the Department of Home Affairs (the department) refused to grant him a further partner visa as he had not provided evidence of a continuing relationship with his Australian sponsor. He was granted a bridging visa in association with his refused partner visa application.
2 October 2014	Applied to the Migration Review Tribunal (MRT) for merits review of his negative partner visa outcome.
31 August 2015	The Administrative Appeals Tribunal (AAT) ¹ remitted Mr X's case to the department for reconsideration with the direction that he met the criteria for a partner visa.
21 December 2016	Issued with a Notice of Intention to Consider Refusal of his partner visa application under s 501 following criminal convictions. Mr X provided a response on 8 February 2017.
6 April 2017	The department advised Mr X of further information regarding a possible refusal of his visa application under s 501 and he was invited to comment.
2 August 2017	Partner visa application refused under s 501.
14 August 2017	Applied to the AAT for merits review of his negative partner visa outcome.

¹ On 1 July 2015 the MRT and Refugee Review Tribunal were merged into the AAT.

Criminal history

August 2013	Convicted of offences relating to disorderly behaviour.
February 2016	Convicted of a sexual offence against a child and sentenced to an intensive supervision order for 11 months.

Health and welfare

International Health and Medical Services advised that Mr X did not receive treatment for any major physical or mental health issues during this assessment period.

Other matters

The department advised that Mr X's wife and two children are Australian citizens and reside in State E.

Information provided by Mr X

During an interview with Ombudsman staff on 30 January 2018, Mr X advised that he had received a negative outcome at the AAT and had applied to the Federal Circuit Court for judicial review. He said that he is scheduled to attend a hearing in March 2018 and that he asked the court to provide him with a lawyer, but he received no response. He stated that he is planning to represent himself but finds the preparation process to be difficult. He advised that he has not spoken with his case manager recently but he contacted them in December 2017 to inform them that he had applied for judicial review.

Mr X reported that he found the Serco officers at Facility D to be respectful and he had no concerns with the facilities. He said that he does not get much free time and feels like he spends too much time indoors. He advised that he sometimes feels depressed and stressed in detention and has attended counselling.

Mr X said that he has a wife and two young children who reside in City F. He said he has not seen them since December 2015 but speaks to them on the telephone every day. He said that his detention is hard on his family and his children miss him and are worried about him. He said that he would like to be transferred to Facility B so that he can reside closer to his family.

Ombudsman assessment/recommendation

Mr X was detained on 24 April 2015 following the cancellation of his visa and has remained in an immigration detention facility for more than two and a half years.

On 2 August 2017 Mr X's partner visa application was refused under s 501 and on 14 August 2017 Mr X applied to the AAT for merits review.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose. The Ombudsman also notes Mr X's advice that his wife and children reside in City F and he has not seen them since December 2015.

In light of these concerns, the Ombudsman recommends that, if appropriate, consideration be given to transferring Mr X to an immigration detention facility in State E to enable him to reside closer to his family.