

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 more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1982
Ombudsman ID	1002619-O
Date of DIBP's reports	8 March 2017 and 6 September 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

9 March 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following his release from a correctional facility. He was transferred to Facility B.
5 August 2015	Transferred to Facility C.
27 May 2016	Transferred to Facility D.
23 June 2016	Transferred to Facility C.
20 October 2016	Transferred to Facility B.

Visa applications/case progression

<p>Mr X arrived in Australia with his family on 5 July 1990 on a migrant visa. He subsequently held a transitional permanent visa following legislative amendment on 1 September 1994.</p> <p>The Department of Immigration and Border Protection (the department) advised that consideration was previously given to cancelling Mr X's visa under s 501 on two occasions in light of his criminal history. The delegate declined to cancel Mr X's visa on both occasions and instead issued a warning.</p>	
18 December 2014	Transitional permanent visa cancelled under s 501 on character grounds following further criminal convictions.
7 January 2015	Issued with a Notice of Visa Cancellation and invited to comment on the decision to cancel his visa under s 501.
19 January 2015	Requested that the decision to cancel his visa be revoked.
14 September 2015	The Assistant Minister decided not to revoke the decision to cancel Mr X's visa.
19 October 2015	Applied to the Federal Circuit Court (FCC) for judicial review.
18 January 2016	FCC transferred proceedings to the Federal Court (FC).
5 October 2016	FC affirmed original decision.
26 October 2016	Applied to the Full Federal Court (FFC) for judicial review.
26 April 2017	FFC dismissed the application.
28 June 2017	Lodged a Protection visa application.
4 July 2017	Protection visa application refused.

7 July 2017	Applied to the Administrative Appeals Tribunal for merits review of the department's decision to refuse his Protection visa application.
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Criminal history

September 2006 – August 2012	Convicted of 23 offences including armed robbery, threatening to kill, theft and assault, and served four terms of imprisonment.
September 2014	Convicted of two counts of armed robbery and sentenced to two years and six months imprisonment with a non-parole period of one year and two months.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has a history of chronic paranoid schizophrenia with traits of obsessive compulsive disorder and an anxiety disorder. Mr X also has a history of self-harm in response to auditory hallucinations and has been placed on Supportive Monitoring and Engagement observations on multiple occasions while in detention. In May 2016 Mr X was admitted to hospital for psychiatric treatment after experiencing paranoid delusions and hallucinations and in October 2016 he was admitted to a specialist clinic to commence antipsychotic medication. IHMS advised that Mr X attends weekly psychological counselling and monthly psychiatric reviews to monitor his condition and improvements in his mental health were reported.

On 27 January 2017 Mr X was reviewed by a cardiologist to monitor potential side-effects associated with his prescribed antipsychotic medication. He also regularly underwent investigative testing to monitor his physical health and was referred to a dietician after experiencing weight changes.

IHMS further advised that Mr X was provided with treatment for multiple physical health concerns, including shoulder pain, nerve abnormalities and a recurring bacterial infection. He regularly attended physiotherapy for management of his shoulder pain and was referred to a neurologist in March 2017 for review of his nerve abnormality.

7 April 2015	An Incident Report recorded that Mr X self-harmed while experiencing hallucinations.
6 August 2015	An Incident Report recorded that Mr X threatened self-harm while experiencing hallucinations.
27 May 2016 – 2 June 2016	Admitted to a psychiatric hospital.
21 October 2016 – 17 November 2016	Admitted to a specialist clinic for psychiatric treatment.

Other matters

7 November 2015	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman (the Office) after he was separated from his family in City E following his transfer to Facility C. The department provided a response on 12 January 2016 and the complaint was finalised on 26 February 2016.
12 August 2016	Mr X lodged a complaint with the Office in relation to concerns about his mother's ability to visit while he was admitted to hospital for psychiatric treatment. The complaint was finalised on 29 September 2016.

Information provided by Mr X

During an interview with Ombudsman staff on 23 June 2017 Mr X advised that he suffers from paranoid schizophrenia and has been prescribed with antipsychotic medication while in detention. He said that he regularly sees a psychiatrist and the combination of psychiatric support and medication had significantly improved his condition. He stated that he is now more open and honest with people and wished for another opportunity to live in the community.

Mr X stated that he had not taken effective medication when he lived in the community and had encountered problems with drinking and gambling as a result. He stated that he knew that his armed robbery offences were wrong and chose to hand himself in to the police at the time.

Mr X advised that he recently lost his case at the Federal Court and was afraid he would be involuntarily returned to Country A. He said he had seen a removals officer yesterday and they were obtaining a travel document for him. He advised that his legal team was preparing a Protection visa application and a neuropsychologist was assisting him on a pro bono basis. He also advised that he was worried about his mother as she also suffers from a mental health condition and she used to care for him. Additionally, he explained that he was only seven years old when he arrived in Australia and does not speak the Country A language.

Mr X said that his family and friends regularly visit him in detention and he has visitors almost every day.

Ombudsman assessment

Mr X was detained on 9 March 2015 following his release from a correctional facility and has been held in an immigration detention facility for more than two and a half years.

Mr X's transitional permanent visa was cancelled under s 501 on 18 December 2014 following criminal convictions. The Assistant Minister decided not to revoke the decision to cancel Mr X's visa on 14 September 2015 and on 26 April 2017 the FFC dismissed Mr X's application for judicial review.

Mr X lodged a Protection visa application on 28 June 2017 and on 4 July 2017 his Protection visa application was refused. At the time of the department's latest report, Mr X was awaiting the outcome of 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. Mr X has received extensive treatment for chronic paranoid schizophrenia with traits of obsessive compulsive disorder and an anxiety disorder while in detention, including regular psychological counselling and psychiatric reviews. The Ombudsman notes the advice of IHMS that his condition has improved as a result of this ongoing treatment and mental health support.

The Ombudsman further notes that Mr X has been convicted of numerous criminal offences in Australia and has served five terms of imprisonment.