

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	1970
Ombudsman ID	2000001-O
Date of department's report	19 June 2017 and 13 December 2017
Total days in detention	912 (at date of department's latest report)

Detention history

15 June 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> while held at a correctional facility.
19 June 2015	Transferred to Facility F.
9 October 2015	Transferred to Facility G.
25 January 2015	Transferred to Facility F.

Visa applications/case progression

<p>Mr X was born in Territory B as an Australian citizen, however he was not entitled to reside in Australia. He ceased to be an Australian citizen when Country A became independent.</p> <p>The Department of Home Affairs (the department) advised that Mr X claimed he arrived in Australia with his parents in 1974, however this is not documented in departmental records.</p> <p>Mr X was granted a permanent entry permit on 15 April 1982 and following legislative amendment in September 1994, he held a permanent visa.</p> <p>Mr X lodged an application for Australian citizenship on 26 March 1997 and on 11 February 1998 the grant of citizenship was approved subject to conferral. On 2 May 2001 the grant was revoked as Mr X did not attend a citizenship ceremony. The department advised that Mr X was held in a correctional facility during this time.</p>	
14 June 2002 – 27 October 2008	Issued with four Notices of Intention to Consider Cancellation of his visa under s 501. He was issued with formal warnings in August 2007 and January 2009.
10 June 2015	Permanent visa mandatorily cancelled under s 501 following criminal convictions.
5 October 2016	The Assistant Minister decided not to revoke the cancellation of Mr X's visa under s 501.
17 November 2016	Mr X refused to depart Australia voluntarily.
7 February 2017	The department commenced the process of applying for a Country A travel document on Mr X's behalf.

16 June 2017	Applied to the Federal Court (FC) for judicial review of the Assistant Minister's decision.
21 August 2017	Filed a notice of discontinuance at the FC.
5 September 2017	Applied to the FC for judicial review of the Assistant Minister's decision.
23 November 2017	FC placed Mr X's matter on hold pending the determination of another matter ¹ before the High Court (HC).

Criminal history

October 1999	Convicted of two offences, including indecent assault, and sentenced to two years imprisonment.
December 2005	Convicted of two offences, including threatening violence, and sentenced to one year imprisonment.
November 2007	Convicted of three offences, including indecent assault and threatening violence, and sentenced to four years imprisonment.
March 2015	Convicted of three offences, including contravening a Domestic Violence Order and using a carriage service to menace, and sentenced to 10 months imprisonment.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X attended counselling for the management of sleep concerns, negative rumination and depressed mood. In November 2016 he presented with frustration and hopelessness related to his immigration pathway and reported that rumination about his violent past was preventing improvements in his mental health. He was provided with exercises to manage his mental health and improvements were noted.

IHMS further advised that Mr X received treatment for multiple physical health concerns, including type 2 diabetes, osteoarthritis and knee pain.

Other matters

24 February 2017	<p>Mr X's advocate, Mr Y, lodged a complaint with the Office of the Commonwealth Ombudsman on behalf of Mr X and another immigration detainee. Mr Y raised concerns regarding Mr X's citizenship because he had resided on Island D and served in the Australian Army reserves.</p> <p>The Office has commenced an investigation into Mr X's citizenship status and the department has provided multiple responses. The complaint remained ongoing at the time of drafting this assessment.</p>
Mr X's parents and extended family reside in State E.	

¹ *Falzon v Minister for Immigration and Border Protection* (Ref: S31 of 2017).

Case status

Mr X was detained on 15 June 2015 following his release from a correctional facility and has remained in immigration detention, both in a detention facility and correctional facility, for more than two and a half years.

Mr X's permanent visa was cancelled under s 501 on 10 June 2015 and on 5 October 2016 the Assistant Minister decided not to revoke the cancellation of his visa.

On 5 September 2017 Mr X applied to the FC for judicial review of the Assistant Minister's decision and on 23 November 2017 the FC placed Mr X's matter on hold pending the determination of another matter before the HC.