

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, born in Country B
Year of birth	1977
Ombudsman ID	1002625-O
Date of DIBP's reports	23 March 2017 and 13 September 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

16 March 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> while held at a correctional facility.
24 March 2015	Transferred to Brisbane Immigration Transit Accommodation following his released from a correctional facility.
25 March 2015	Transferred to Wickham Point Alternative Place of Detention.
27 May 2015	Transferred to Facility C.

Visa applications/case progression

The Department of Immigration and Border Protection's (the department) Mr X arrived in Australia on 19 April 1987 on a BF-000 (Permanent) visa. Following legislative amendment on 1 September 1994, Mr X held a Transitional (Permanent) visa.	
10 July 2000	Applied for Australian citizenship. Mr X's application was refused on 2 January 2001 after he failed to respond to the department's request for further information regarding his criminal offences.
2 March 2015	Transitional (Permanent) visa cancelled under s 501 following criminal convictions. Mr X was invited to respond to the department's decision to cancel his visa.
30 March 2015	Mr X's legal representative lodged a Request for Revocation of Cancellation. On 18 March 2016 the Minister decided not to revoke the decision to cancel Mr X's visa under s 501.
21 April 2016	Applied to the Federal Court (FC) for judicial review. Mr X withdrew his application on 22 June 2016.
16 June 2016	Applied to the Federal Circuit Court (FCC) for judicial review. Mr X's application was transferred to the FC on 26 August 2016.
7 December 2016	FC quashed the department's decision to cancel Mr X's visa under s 501.
22 December 2016	The Minister applied to the Full Federal Court (FFC) for judicial review of the FC's decision. On 7 June 2017 the FFC set aside the FC's decision.
4 July 2017	Applied to the High Court (HC) for special leave to appeal the FFC's decision.

Criminal history

1993 – 2000	Found guilty of multiple offences, including violent offending and drug offences. The penalties included a \$500 fine and one year probation.
May 2002	Convicted of a property offence and sentenced to two months imprisonment.
November 2012	Convicted of trafficking and drug offences and sentenced to seven years imprisonment.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has a history of depression and anxiety and presented with poor sleep and frustration related to his immigration pathway. Mr X continues to take prescribed medication and is monitored by the mental health team. In June 2017 an IHMS mental health nurse noted that he was feeling overwhelmed by a negative court decision and the fact that his wife was pregnant, but was handling his situation well.

IHMS further advised that Mr X was provided with treatment for physical health concerns, including a skin condition and shoulder pain.

Information provided by Mr X

During an interview with Ombudsman staff on 9 November 2017 Mr X advised that he had applied to the HC for leave to appeal the FFC's decision and was awaiting a response. He said that if the HC denied his application, he would either be deported to Country A or could write to the Minister and request ministerial intervention.

Mr X advised that he married another immigration detainee four months ago and she is currently 36 weeks pregnant. He said that she is an asylum seeker who was transferred to Facility C from Nauru Regional Processing Centre and they have been together for more than 15 months. He advised that she was placed in the community in City D around six weeks ago and he is very concerned about her mental health. He explained that she is stressed, isolated and upset and their separation is very difficult. He said that he has been allowed to attend antenatal appointments with his wife, but he is worried about how she will manage once the baby is born.

Mr X said that he suffers from depression and poor sleep and is currently taking a high dosage of antidepressant and sleeping medication. He stated that he experienced a panic attack soon after he arrived in immigration detention and struggles with the unpredictability of the detention centre environment.

Mr X also raised concerns about his possible removal to Country A as he has lived in Australia for more than 30 years and feels like an Australian. He said that he takes responsibility for his past behaviour and stressed that his behavioural record in detention is immaculate. He explained that he cannot read or write in the language of Country A and would find it difficult to secure employment to support his wife and child.

Mr X advised that his mother and two sisters are Australian citizens and are able to visit him in immigration detention.

Ombudsman assessment

Mr X was detained on 16 March 2015 while held at 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 2 March 2015 and on 18 March 2016 the Minister decided not to revoke the cancellation of his visa.

At the time of the department's latest report, Mr X was awaiting the outcome of judicial 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. IHMS has advised that Mr X receives treatment for depression and anxiety related to his immigration pathway.