

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1982
<b>Ombudsman ID</b>	1002670-O
<b>Date of department's reports</b>	6 May 2017 and 8 November 2017
<b>Total days in detention</b>	916 (at date of department's latest report)

### Detention history

7 May 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa under s 501. He was transferred to Yongah Hill Immigration Detention Centre (IDC) on 12 May 2015.
9 October 2015	Transferred to Christmas Island IDC.

### Visa applications/case progression

<p>Mr X arrived in Australia on 22 July 2004 on a Global Special Humanitarian visa.</p> <p>A delegate of the Minister considered cancelling Mr X's permanent visa under s 501 in 2009 after he was convicted of criminal offences. The delegate declined to cancel Mr X's permanent visa under s 501 and instead issued him with a warning letter advising that further criminal convictions could result in the cancellation of his visa.</p> <p>In 2012 Mr X lodged three Conferral of Citizenship applications that were deemed to be invalid or failed to meet the legislative criteria.</p>	
1 May 2015	Permanent visa cancelled under s 501.
16 June 2016	Mr X lodged a Request for Revocation of Cancellation. On 26 July 2016 a delegate of the Minister refused to revoke the decision to cancel Mr X's visa under s 501.
8 June 2017	The Administrative Appeals Tribunal (AAT) affirmed the decision not to revoke the cancellation of Mr X's visa under s 501.
30 June 2017	Applied to the Federal Court (FC) for judicial review. On 30 August 2017 the FC adjourned the matter to a date to be fixed following the determination of the High Court in another matter. <sup>1</sup>

### Criminal history

<p>Mr X has been charged with numerous criminal offences between 2006 and 2014, including driving offences and breaches of court orders.</p>
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<sup>1</sup> *BCR16 v Minister for Immigration and Border Protection* (2017) FCAFC 96.

August 2009 and May 2014	Convicted of driving under the influence of alcohol and driving while disqualified, and received three sentences of one year imprisonment and one sentence of nine months imprisonment.
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**Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication for insomnia, but denied experiencing symptoms of depression or anxiety. In January 2017 Mr X attended a routine psychiatry review and was identified as having an alcohol dependence disorder which had caused him legal, work and health problems. He was made aware of the self-referral process if he required further mental health support. In July 2017 Mr X disclosed a history of torture and trauma and attended specialist counselling.

IHMS further advised that Mr X was prescribed with medication and attended physiotherapy for ongoing back and knee pain. He was reviewed by a pain specialist and reported some improvement in his back condition in July 2017 following an injection treatment. However he continued to present to a physiotherapist with knee pain. He required further review with a physiotherapist but no appointment had been scheduled at the time of IHMS’s latest report.

**Other matters**

The Department of Home Affairs (the department) advised that Mr X has an ex-partner and daughter in Australia and he does not have contact with them. He also has a cousin in Queensland who is an Australian citizen.

**Information provided by Mr X**

During an interview with Ombudsman staff on 1 February 2018 Mr X advised that the FC had remitted his case to the AAT and that he was now awaiting merits review of his visa cancellation under s 501. Mr X said that he was represented by a legal aid lawyer at the FC and was looking for a lawyer to help him at the AAT.

Mr X advised that he was mentally unwell, but he was trying to get better. He explained that sometimes he has nightmares and flashbacks of traumatic experiences in his home country. Mr X said that he had attended specialist counselling and was taking antidepressants and sleeping medication which helps. He had a single room and was very worried about potentially being transferred to a shared room because it would interfere with the management of his sleep concerns. Mr X said that he was suffering in detention and that it was very scary facing the prospect of removal. He said that he just wanted another chance to be in the community because he felt that he had changed and was a better person.

Mr X advised that he has no family in his home country. His mother and brother live in the United States and he speaks with them over the telephone every week. His aunt and her children live in Brisbane and he also calls them regularly. Mr X stated that he has infrequent contact with his daughter who lives in Australia and he was sad that she was growing up without him. He said that he would prefer to be transferred to a facility in Brisbane or Sydney, so that he could reside closer to his family and support network.

### **Ombudsman assessment/recommendation**

Mr X was detained on 7 May 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than two and a half years.

Mr X's permanent visa was cancelled under s 501 on 1 May 2015. A delegate of the Minister refused to revoke the decision to cancel Mr X's visa under s 501 on 26 July 2016 and the AAT affirmed the refusal on 8 June 2017.

On 30 June 2017 Mr X applied to the FC for judicial review. Mr X advised during an interview with Ombudsman staff on 1 February 2018 that his case had since been remitted by the FC to the AAT and that he continued to await the decision of the AAT.

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 has been prescribed with medication for insomnia and has attended specialist counselling for a history of torture and trauma.

The Ombudsman further notes that Mr X has family members in Brisbane and Sydney and advised that his mental health would benefit from their support.

In light of Mr X's mental health concerns and the absence of any recent behavioural or security concerns, the Ombudsman recommends that consideration be given to transferring Mr X to an immigration detention facility in Brisbane or Sydney to enable him to reside closer to his family and support network.