

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1968
<b>Ombudsman ID</b>	1002726-O
<b>Date of department's reports</b>	30 July 2017 and 29 January 2018
<b>Total days in detention</b>	913 (at date of department's latest report)

### Detention history

3 December 2011	Detained under s 189(1) of the <i>Migration Act 1958</i> following his release from a correctional facility. He was transferred to Villawood Immigration Detention Centre.
12 April 2013	Granted a Protection visa and released from immigration detention.
8 December 2016	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Facility B.
8 March 2017	Transferred to Facility C.

### Visa applications/case progression

Mr X arrived in Australia with his family on 23 June 2006 on a Global Special Humanitarian visa.	
17 November 2010	Issued with a Notice of Intention to Consider Cancellation of his visa under s 501. Mr X provided a response on 16 December 2010.
17 November 2011	Global Special Humanitarian visa cancelled under s 501.
9 February 2012	The Administrative Appeals Tribunal (AAT) affirmed the decision to cancel Mr X's visa under s 501.
26 March 2012	Lodged a Protection visa application.
27 March 2012	Lodged a bridging visa application which was subsequently deemed invalid under s 501.
24 May 2012	Protection visa application refused.
5 July 2012	The Federal Court (FC) dismissed Mr X's application for judicial review of the AAT's decision.
30 August 2012	The Full Federal Court (FFC) dismissed Mr X's application for judicial review of the FC's decision.
10 September 2012	The Refugee Review Tribunal set aside the decision to refuse Mr X's Protection visa application with the direction that Mr X satisfies the criteria of a refugee under s 36(2)(a).

29 October 2012	The Department of Home Affairs (the department) referred Mr X's Protection visa application to the Minister for consideration under s 501.
11 January 2013	A delegate of the Minister found that Mr X did not pass the character test under s 501, but decided not to refuse his Protection visa application. Mr X received a formal warning and on 12 April 2013 he was granted a Protection visa.
27 April 2016	Protection visa mandatorily cancelled under s 501 following further criminal convictions.
10 May 2016	Mr X lodged a Request for Revocation of Cancellation. He provided further information on 2 October 2017 and 21 November 2017.
14 July 2017	The department commenced an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of Mr X's case engages Australia's <i>non-refoulement</i> obligations.
22 September 2017	The department finalised the ITOA, determining Mr X's case does continue to engage Australia's <i>non-refoulement</i> obligations.
19 January 2018	Mr X's Request for Revocation of Cancellation was referred to the Minister.
29 January 2018	The department advised that Mr X was not being considered for an alternative placement, either a community placement or bridging visa, while this request remains ongoing.

### **Criminal history**

September 2008 – September 2010	Convicted of multiple offences including assault, stalking and intimidation, and contravening Apprehended Violence Orders (AVO). He received fines and was sentenced to multiple terms of imprisonment.
May 2011	Convicted of a stalking and intimidation offence and contravening an AVO. He was sentenced to nine months and three months imprisonment respectively.
October 2015	Convicted of assault and sentenced to three years and two months imprisonment with a non-parole period of two years and one month. His sentence was taken to have commenced on 16 April 2014.

### **Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X sustained a head injury in a motor vehicle accident in 2008. In March 2012 he presented with ongoing jaw pain and headaches and investigative testing identified swollen tissue and a healed skull fracture. He was provided with education and continued to take pain relief medication as required.

IHMS further advised that Mr X has a history of anger issues, poor sleep and post-traumatic stress disorder. In September 2012 he reported that his mood and sleep had improved since he had been prescribed with medication. In January 2013 he was referred for a neurocognitive assessment due to his previous head injury and reported memory impairment.

Following his re-detention, Mr X presented with frustration and insomnia related to situational concerns. He has engaged with the mental health team for counselling and his medication was adjusted. In September 2017 he was referred for specialist counselling.

**Other matters**

22 September 2017	The department was notified that Mr X lodged a complaint with the Australian Human Rights Commission. On 21 November 2017 the department provided a response. The matter remained ongoing at the time of the department's latest report.
23 January 2018	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to the progress of his immigration case. The complaint remained ongoing at the time of drafting this assessment.
The department advised that Mr X's estranged wife and children reside in the Australian community.	

**Case status**

Mr X was detained on 3 December 2011 following his release from a correctional facility and has remained in an immigration detention facility for a cumulative period of more than two and a half years.

On 17 November 2011 Mr X's Global Special Humanitarian visa cancelled under s 501 and the decision was affirmed by the AAT, FC and FFC.

On 27 April 2016 Mr X's Protection visa was mandatorily cancelled under s 501 and on 19 January 2018 his Request for Revocation of Cancellation was referred to the Minister.

On 29 January 2018 the department advised that Mr X was not being considered for an alternative placement, either a community placement or bridging visa, while his Request for Revocation of Cancellation remains ongoing.