

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	1948
Ombudsman ID	1002640-O
Date of DIBP's reports	18 April 2017 and 16 October 2017
Total days in detention	914 (at date of DIBP's latest report)

Detention history

16 April 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.
18 April 2015	Transferred to Facility C.

Visa applications/case progression

Mr X claimed to have first arrived in Australia in 1980, and then departed Australia and returned on 31 January 2008 on a visa.	
17 March 2015	Visa cancelled under s 501.
23 April 2015	Mr X's representative lodged a Request for Revocation of Cancellation. On 2 September 2015 the Minister decided not to revoke the decision to cancel Mr X's visa under s 501 and on 7 September 2015 the Department of Immigration and Border Protection (the department) notified Mr X's representative of this decision.
7 October 2015	Applied to the Federal Court (FC) for judicial review.
10 May 2016	The FC rejected the Minister's decision. This enlivened the original request for revocation.
12 August 2016	Mr X's case was referred on a ministerial submission for consideration under s 197AB for the grant of a community placement. The submission was returned un-actioned.
24 November 2016	The Minister again decided not to revoke the decision to cancel Mr X's visa under s 501.
21 December 2016	Applied to the FC for judicial review.
29 May 2017	Found not to meet the guidelines for referral to the Minister under s 197AB.
13 June 2017	The FC reserved judgment.

Criminal history

17 December 2014	Sentenced to a cumulative period of four months imprisonment in relation to multiple charges involving child pornography.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple complex physical health conditions including gastric reflux, a hearing impairment, lung and heart concerns and skin cancers.

Mr X received a bilateral lung transplant prior to his arrival in detention and required ongoing specialist review and testing. He was prescribed with medication and IHMS advised that Mr X would require emergency presentation to a hospital or general practitioner if he demonstrated signs of an infection. A specialist review in April 2017 noted that Mr X's lung function had reduced slightly but was still within normal limits. He was prescribed with a nasal spray for hay fever concerns and continued to be monitored. An IHMS Medical Director advised that Mr X required complex care and recommended that Mr X continue to be placed near a large medical facility and in a single room as he was at considerable risk of infection if placed within a group setting.

IHMS further advised that Mr X underwent heart surgery prior to his arrival in detention and required ongoing specialist review and testing. He was prescribed with medication and in January 2016 he presented to hospital with chest pain. Later in the year, Mr X's sternum was determined to have a surgery-related defect. Upon further review in June 2016 it was noted that the complication had self-repaired.

Mr X also required removal of multiple skin cancers and was prescribed with topical medication to manage these concerns. In November 2016 he required a scalp skin graft. Following review in July 2017, a dermatologist advised that his condition was being well-managed and referred Mr X to a plastic surgeon. Mr X was scheduled to undergo reparative surgery on 6 September 2017 with no further information available at the time of IHMS's latest report.

IHMS also advised that Mr X engaged with the mental health team and in a review in June 2017 he was determined to be at low-risk of self-harm and of sound mind and judgement.

Ombudsman assessment

Mr X was detained on 16 April 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 visa was cancelled under s 501 on 17 March 2015 and on 21 December 2016 he applied to the FC for judicial review. 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 due to Mr X's complex medical needs he required ongoing specialist review and management and was at considerable risk of infection if placed within a large group setting.