

## 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>	1984
<b>Ombudsman ID</b>	1002629-O
<b>Date of DIBP's reports</b>	23 March 2017 and 21 September 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

23 March 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.
28 May 2015	Transferred to Facility C.
28 October 2015	Transferred to Facility D.
9 February 2017	Transferred to Facility B.

### Visa applications/case progression

12 March 2011	Arrived in Australia on a Prospective Marriage visa.
22 July 2011	Lodged a partner visa, which was granted on 29 November 2011.
6 February 2015	Partner visa cancelled under s 501.
4 March 2015	Mr X lodged a Request for Revocation of Cancellation of his partner visa. On 10 September 2015 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa under s 501.
6 September 2016	Lodged a Protection visa application with an associated bridging visa application.
7 September 2016	Bridging visa application deemed invalid under s 501.
14 January 2016	Applied to the Federal Court (FC) for judicial review of the Assistant Minister's decision not to revoke the cancellation of his partner visa.
17 August 2016	FC dismissed Mr X's application for judicial review.
7 September 2016	Applied to the Full Federal Court (FFC) for judicial review of the FC's decision.
30 November 2106	FFC reserved judgment.
25 January 2017	Found not to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.
13 June 2017	FFC set aside the decision of the Assistant Minister and remitted the matter for determination according to law.

11 July 2017	The Minister applied to the High Court (HC) for judicial review of the FFC's decision.
17 August 2017	Protection visa application refused under s 36.  The delegate of the Minister noted Mr X's low risk of re-offending, the mitigating factors surrounding the crime, the fact that Mr X had no previous criminal offences, that he had obtained good character references and demonstrated good behaviour in detention. However, the delegate assessed that Mr X presented a danger to the Australian community due to the possibility that he may respond in the same manner if presented with a similarly stressful situation as that which had led to his criminal offence.
17 November 2017	The HC dismissed the Minister's application for special leave.

### **Criminal history**

April 2013	Convicted of recklessly causing serious injury and recklessly causing injury and sentenced to four years and three months imprisonment.
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### **Health and welfare**

<p>International Health and Medical Services (IHMS) advised that Mr X was placed on Supportive Monitoring and Engagement observations following an incident of self-harm in November 2016 and was referred for specialist counselling. Upon psychiatric review in December 2016 he was diagnosed with an adjustment disorder with depressed mood, having expressed guilt regarding his criminal conviction, fear associated with his immigration pathway and stress in relation to his family. In January 2016 a psychiatrist recommended that Mr X be urgently transferred to a facility in City E so that his wife and daughter would be able to regularly visit, as this would be highly beneficial for his mental health and would prevent further deterioration. Mr X was transferred to City E in February 2017 and in March 2017 Mr X reported some improvement in his mood, however he continued to feel depressed, stressed and anxious. He engaged with IHMS, was prescribed with medication and attended specialist torture and trauma counselling.</p> <p>IHMS further advised that Mr X received treatment for nasal concerns, back pain and neck pain. He attended physiotherapy for the management of pain associated with neck spasms. The physiotherapist noted that his anxiety and stress were strong contributing factors to the spasms and recommended ongoing psychological support and relaxation techniques.</p>	
23 November 2016	An Incident Report recorded that Mr X self-harmed.

### **Other matters**

7 January 2016	The department was notified that Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). The department provided a response on 27 January 2016, 14 September 2016 and 31 January 2017. The matter remained ongoing at the time of the department's latest report.
Mr X has an Australian citizen wife and a daughter who reside in the community.	

## Information provided by Mr X

During interviews with Ombudsman staff on 23 June 2017, 17 November 2017 and 7 December 2017 Mr X advised that he often felt very anxious and that sometimes loud noises trigger traumatic memories of experiences in Country A.

Mr X explained that when he was placed at Facility C his mental health had deteriorated due to his separation from his wife and five year old daughter and he began to experience nightmares and symptoms of anxiety. He said that he lodged a complaint with the AHRC after making multiple requests to be transferred to a facility in City E. He was transferred to Facility D, but remained mentally unwell and attempted suicide. He has since been transferred back to Facility B, and his wife and daughter visit him three or four times a week.

He explained that he tried to fill his time with activities, but some days he struggles to motivate himself to leave his room due to how depressed he feels. He explained that the noise and lack of privacy in detention negatively impacts on his mental health and stated that he was recently diagnosed with post-traumatic stress disorder (PTSD), depression and untreated childhood panic attacks.

Mr X advised that he had been found to be owed protection under the complementary protection criterion, and that the FFC had found in his favour. He stated that the Minister had sought to appeal the FFC decision, but on 17 November 2017 the HC dismissed the appeal, determining that there had been a legal error in the decision not to revoke the cancellation of his partner visa.

Mr X explained that after the HC finalised its decision he expected his case to be resolved quickly, but that has not been the case, and he feels like he is in legal limbo. He has a private lawyer who has been of great assistance during this process, but it has cost his family a lot of money, and he is concerned about their capacity to continue paying legal costs. However, he explained that he was also concerned about changing lawyers because his current lawyer was well aware of his case and he did not want to have to start again with a new lawyer. He stated that he believed his lawyer was preparing another request for revocation of the decision to cancel his partner visa.

Mr X explained that he had been assessed to be at a low risk of re-offending by courts, doctors, correctional facility staff and psychiatrists, and that a specialist counselling service had recently recommended that he be transferred to a lower security facility in City E. Mr X explained that his behaviour has been exceptional while in a correctional facility and immigration detention, and that he has a good relationship with detention centre staff and other detainees.

He further explained that he was very remorseful regarding his criminal offence, that he understood that his action was cowardly and rash, and that he had committed a very serious crime. He explained that his wife had been assaulted, and that he had confronted the alleged perpetrator but the interaction had escalated. He stated that he often thought about the event and how he could have instead taken his wife on a holiday to support and take care of her. He explained that he has used the opportunities provided to him while placed in a correctional facility and in immigration detention to better himself through mental health support and behavioural and educational certificates.

Mr X advised that his wife and daughter live with his wife's parents as they are unable to afford to pay rent without his support. He explained that his daughter was 10 months old when he was placed in a correctional facility and that it was heart breaking to miss out on so much while she grows up. He explained that his continued detention has an impact on the whole family, and that they are exhausted. He stated that he had a lot of support in the community and that a business he used to work for said they would employ him if he was released. He stated that he does not want to be a burden on his family anymore, and wants to give his wife a husband and his daughter a father.

### **Information provided by Mr X in an independent psychological assessment**

Mr X provided a copy of an independent psychological assessment to Ombudsman staff during an interview on 23 June 2017. The psychological assessment advised that Mr X and his wife were assessed to be in the severe range for anxiety, depression and stress and met the criteria for PTSD.

The psychological assessment further advised that Mr X hopes to be reunited with his wife and daughter in the community, and that his mental health is likely to significantly deteriorate if his immigration pathway leads to removal from Australia, with a high likelihood of self-harm. The assessment advised that the possible removal of Mr X from Australia would have a significant negative impact on the family, exacerbating each family member's mental health.

### **Ombudsman assessment/recommendation**

Mr X was detained on 23 March 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 partner visa was cancelled under s 501 on 6 February 2015 and on 10 September 2015 the Assistant Minister decided not to revoke the decision to cancel his visa.

On 13 June 2017 the FFC set aside the decision of the Assistant Minister and remitted the matter for determination according to law. On 11 July 2017 the Minister applied to the HC for judicial review of the FFC's decision and on 17 November 2017 the HC dismissed the Minister's application.

1. The Ombudsman recommends that the department expedite the reconsideration of the Assistant Minister's decision not to revoke the cancellation of Mr X's partner visa according to law.
2. In light of the length of time Mr X has remained in detention, his good behaviour and ongoing mental health concerns, the Ombudsman also recommends that Mr X be transferred to Facility F so that he can remain in a less restrictive environment while he awaits the resolution of his immigration status.