

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 restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1991
Ombudsman ID	1002520-O
Date of DIBP's reviews	7 October 2016 and 7 April 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

8 October 2014	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa. He was transferred to Maribyrnong Immigration Detention Centre (IDC).
11 June 2015	Transferred to Yongah Hill IDC.
9 October 2015	Transferred to Facility B.

Visa applications/case progression

24 May 2005	Arrived on a Child Migrant visa with his three brothers to reside with their mother, who arrived in Australia in 1999.
1 October 2013	Mr X was issued with a Notice of Intention to Consider Cancellation of his Child Migrant visa under s 501.
2 October 2013	Child Migrant visa cancelled under s 501.
5 November 2014	Lodged a Protection visa application.
16 October 2016	Mr X was issued with a Notice of Intention to Consider Refusal of his Protection visa application under s 501.
17 October 2016	Protection visa application refused under s 501.
21 November 2016	Applied to the Federal Circuit Court (FCC) for judicial review.
20 January 2017	The Minister declined to intervene under s 195A to grant Mr X a Bridging visa.

Criminal history

27 May 2011	Mr X was convicted of intentionally causing serious injury and sentenced to three years imprisonment.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X disclosed a history of mental health concerns including depression, anxiety and self-harm and attended group counselling. In November 2015 he was reviewed by a psychologist following ongoing sleeping concerns.

IHMS further advised that Mr X continued to receive treatment for chronic asthma and nicotine addiction.

Detention incidents

October 2014 – November 2015	Incident Reports recorded that Mr X was allegedly involved in a number of behavioural incidents, including being verbally abusive towards detention centre staff.
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Other matters

20 March 2015 and 7 November 2015	Mr X lodged two complaints with the Office of the Commonwealth Ombudsman (the Office) relating to the use of force and restraints by detention centre staff. The complaints were investigated and finalised on 1 May 2015 and 23 February 2016 respectively.
1 May 2015 and 31 August 2015	Mr X lodged two further complaints with the Office in relation to lost property. The complaints were investigated and finalised on 25 May 2015 and 10 September 2015 respectively.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 21 June 2017 Mr X advised that his application for judicial review by the FCC had been successful and he was now waiting for the Minister to reconsider his Protection visa application. He stated that he was receiving private legal assistance.

Mr X expressed frustration about the length of time he had remained in detention and the uncertainty of his immigration pathway. He said that he is unable to return to his home country and has been found to be owed protection in Australia, but the Minister has refused to grant him a visa.

Mr X advised that he participates in a behavioural program at Facility B that allowed him to spend three hours per week in the community provided he maintained standards of good behaviour. He said that this program has helped him to cope with the stress of detention.

Mr X reported that his son, partner and three step-children reside in City C and he found it very difficult to be separated from them. He advised that he had requested to be transferred to a facility in City C so that they are able to visit him but his applications were refused.

Ombudsman assessment/recommendation

Mr X was detained on 8 October 2014 following the cancellation of his visa under s 501 and has been held in restricted detention for more than two and a half years. At the time of the Department of Immigration and Border Protection's latest review 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 restricted immigration detention may pose. In light of the absence of any recent behavioural concerns, the Ombudsman recommends that consideration be given to transferring Mr X to a detention facility in City C to enable him to reside closer to his support network.