

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	1961
Ombudsman ID	1002673-O
Date of department's reports	15 May 2017 and 13 November 2017
Total days in detention	913 (at date of department's latest report)

Detention history

15 May 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.

Visa applications/case progression

The Department of Home Affairs (the department) advised that Mr X first arrived in Australia with his family on 13 October 1967 under a migration scheme. Following legislative amendment on 1 September 1994, Mr X held a Transitional (Permanent) visa.	
5 November 2007	Issued with a Notice of Intention to Consider Cancellation (NOICC) of his Transitional (Permanent) visa under s 501 following criminal convictions.
6 February 2008	The department notified Mr X that his Transitional (Permanent) visa would not be cancelled under s 501 and instead issued him with a warning letter advising that further criminal convictions could result in the cancellation of his visa.
23 May 2012	Issued with a further NOICC of his Transitional (Permanent) visa under s 501 following further criminal convictions.
21 November 2012	The department notified Mr X that his Transitional (Permanent) visa would not be cancelled under s 501 and instead issued him with a warning letter advising that further criminal convictions could result in the cancellation of his visa.
4 March 2015	Transitional (Permanent) visa mandatorily cancelled under s 501.
24 March 2015	Mr X lodged a Request for Revocation of Cancellation. On 6 May 2016 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa under s 501.
10 June 2016	Applied to the Federal Circuit Court (FCC) for judicial review. On 12 October 2016 the matter was referred to the Federal Court (FC).

16 October 2017	The FC adjourned the matter pending the determination of a case ¹ before the High Court (HC) that was scheduled to be heard on 14 November 2017.
-----------------	---

Criminal history

15 May 2017	The department advised that Mr X has an extensive criminal history and was convicted and served custodial sentences for charges including theft, assault, property damage, threats to kill and intentionally causing injury.
-------------	--

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for complex mental health concerns, including dementia. In July 2016 a psychiatrist noted that Mr X presented with an antisocial personality disorder and a history of long term alcohol abuse resulting in brain damage. In March 2016 a psychiatrist advised that Mr X could be a candidate for a Protective Estates Order or Guardianship in the community, however in November 2016 the psychiatrist noted that he would not qualify as he could consent to medical treatment. The psychiatrist further advised that placement in the community could be difficult for Mr X due to his drug and alcohol dependency and his tendency to be violent. It was also recommended that Mr X continue to reside in his own room due to his dementia.</p> <p>IHMS further advised that Mr X received treatment for hypertension, a lung condition, sciatica, weight concerns and back pain. Mr X was prescribed with medication to manage his hypertension and lung concerns, however he subsequently declined to take his prescribed medication against the advice of a general practitioner. He was also prescribed with medication to manage his back pain and sciatica and was provided with education on lifestyle changes to manage his weight concerns.</p>	
25 June 2015 – 27 February 2016	Incident Reports recorded that Mr X refused food and fluid.

Detention incidents

25 May 2015 – 1 November 2017	Incident Reports recorded that Mr X was allegedly involved in multiple instances of abusive and aggressive behaviour, minor assault and causing disturbance.
----------------------------------	--

Other matters

7 November 2015	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman regarding his transfer to Facility C as he advised that he had been receiving legal assistance while detained at Facility B. The matter was investigated and on 21 January 2016 the department advised that Mr X was transferred due to capacity concerns at Facility B. The complaint was subsequently finalised on 19 February 2016.
Mr X's brother resides in Victoria.	

¹ *Falzon v Minister for Immigration and Border Protection* (Ref: S31 of 2017).

Case status

Mr X was detained on 15 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 Transitional (Permanent) visa was cancelled under s 501 on 4 March 2015 and on 6 May 2016 the Assistant Minister decided not to revoke the decision to cancel his visa.

On 10 June 2016 Mr X applied to the FCC for judicial review and on 12 October 2016 the matter was referred to the FC. On 16 October 2017 the FC adjourned the matter pending the determination of a case before the HC.