

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).

Name	Mr X
Citizenship	Country A ¹
Year of birth	1978
Ombudsman ID	1002758-O
Date of department's reports	6 September 2017 ² and 28 December 2017
Total days in detention	932 (at date of department's latest report)

Detention history

8 October 1999	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to Facility B.
5 January 2000	Granted a Temporary Protection visa (TPV) and released from immigration detention.
7 September 2015	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Facility C.

Visa applications/case progression

Mr X arrived in Australia by sea on 7 October 1999.	
5 January 2000	Granted a TPV that ceased on 24 December 2002.
10 February 2000	Lodged a Protection visa application.
8 March 2002	Issued with a Notice of Intention to Consider Cancellation of his TPV under s 501 following criminal convictions.
24 December 2002	Granted a TPV that ceased on 19 April 2006.
19 August 2003	Protection visa application refused.
12 February 2004	The Minister declined to cancel Mr X's TPV under s 501.
20 April 2004	Refugee Review Tribunal remitted Mr X's Protection visa application to the department for reconsideration.
16 November 2005	Issued with a Notice of Intention to Consider Refusal (NOICR) of his Protection visa application under s 501.
19 April 2006	Granted a TPV that ceased on 19 April 2009.

¹ On 28 December 2017 the department advised that Mr X's nationality has not been conclusively established for the purpose of effecting his removal from Australia.

² On 6 September 2017 the department advised that it did not meet its statutory obligations in delivering Mr X's 24 month s 486N report as departmental systems had not recorded his initial period of immigration detention from 8 October 1999 to 5 January 2000. This recording error was corrected for Mr X's 30-month report, dated 28 December 2017.

17 September 2008	Issued with a warning letter advising that his visa would not be cancelled under s 501 but that further criminal convictions could result in the cancellation of his visa.
23 April 2010	Lodged a Resolution of Status visa (RSV) application.
24 September 2010	Issued with a NOICR of his RSV application under s 501.
27 May 2011	Granted an RSV.
16 July 2012	Issued with a warning letter advising that his visa would not be cancelled under s 501 but that further criminal convictions could result in the cancellation of his visa.
24 August 2015	RSV mandatorily cancelled under s 501.
18 September 2015	Requested removal from Australia.
17 March 2016	Withdrew his request for removal.
16 March 2017	Referred for identity assessment.
28 December 2017	<p>The Department of Home Affairs (the department) advised that Mr X has no matters before the department or courts and is on a removal pathway. The department advised that Mr X's identity and nationality have not been conclusively established for the purpose of issuing him a travel document to effect his removal from Australia.</p> <p>Mr X has refused to cooperate with the department's efforts to establish his identity and, as a result, he was not being considered for referral to the Minister under ss 195A or 197AB for the grant of a bridging visa or a community placement.</p>

Criminal history

2002 – 2007	Convicted of multiple offences, including assault, stalking, possessing prohibited drugs and damage to property. He served multiple terms of imprisonment and on several occasions the court directed Mr X be admitted to hospital under mental health legislation or referred for a mental health assessment.
October 2007	Convicted of two shooting-related offences and sentenced to four years imprisonment.
July 2015	Convicted of assault with an act of indecency and sentenced to two years and eight months imprisonment.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was diagnosed with chronic schizophrenia prior to his arrival in immigration detention and has a history of drug and alcohol abuse, violence related to his diagnosis, and no insight into his illness.

Following his arrival in immigration detention, Mr X has been non-compliant with his prescribed anti-psychotic medication. In June 2016 his mental health deteriorated and it was noted that he was experiencing hallucinations, talking and gesturing to himself, and was isolated and withdrawn. He was transferred to hospital for a mental health assessment and received anti-psychotic medication before being discharged later the same day. In July 2017 he tested positive for illicit substance abuse. At the time of IHMS's latest report, Mr X was declining to engage with IHMS and continued to be non-compliant with medication. His condition was monitored by detention centre staff.

IHMS advised that Mr X was diagnosed with hepatitis C following an induction pathology test and declined treatment. Further pathology testing in November 2016 identified that the virus had cleared and no further monitoring was required.

IHMS further advised that in January 2017 Mr X was allegedly assaulted by another detainee and transferred to hospital for assessment.

June 2016 – January 2017	IHMS advised that Mr X was transferred to hospital on three occasions.
27 September 2017	An Incident Report recorded that Mr X refused food and fluid.

Other matters

The department advised that Mr X has two ex-partners and four children and their location and citizenship was unknown. He also has a cousin who resides in Melbourne and other family members who reside in Country A.

Ombudsman assessment

Mr X was detained on 8 October 1999 following his arrival by sea and has remained in an immigration detention facility for a cumulative period of more than two and a half years. He has no matters before the department, the courts or tribunals and is on a removal pathway.

On 16 March 2017 Mr X was referred for an identity assessment and on 28 December 2017 the department advised that Mr X's identity and nationality have not been conclusively established for the purpose of issuing him a travel document to effect his removal from Australia.

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 advised that Mr X has chronic schizophrenia and was admitted to hospital for psychiatric treatment following a deterioration in his mental health in June 2016. IHMS also advised that Mr X has declined to engage with IHMS and continues to be non-compliant with prescribed medication.

The Ombudsman further notes the department's advice that Mr X has refused to cooperate with the department's efforts to establish his identity and, as a result, he was not being considered for referral to the Minister under ss 195A or 197AB for the grant of a bridging visa or a community placement.