

## 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>	1958
<b>Ombudsman ID</b>	1002645-O
<b>Date of DIBP's reports</b>	22 April 2017 and 25 October 2017
<b>Total days in detention</b>	916 (at date of DIBP's latest report)

### Detention history

23 April 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa under s 501. He was transferred to Facility C.
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### Visa applications/case progression

The Department of Immigration and Border Protection (the department) advised that Mr X arrived in Australia on 29 July 1980 under a refugee program using a false identity and was granted permanent residence status. Following legislative amendment on 1 September 1994, Mr X held a Transitional (Permanent) visa.	
9 June 1997	A delegate of the Minister issued Mr X with a Deportation Order under s 200 following criminal convictions. Mr X subsequently applied to the Administrative Appeals Tribunal (AAT) for merits review. The matter was adjourned on numerous occasions between 1997 and 2006 due to outstanding criminal matters.
22 February 2006	The AAT set aside the Deportation Order after the department withdrew from proceedings.
26 May 2008	The department conducted an identity assessment and confirmed Mr X's identity, including his country of birth.
13 November 2014 and 27 January 2015	Issued with a Notice of Intention to Consider Cancellation of his visa under s 501. Mr X did not provide a response.
8 April 2015	The Assistant Minister cancelled Mr X's visa under s 501.
31 July 2015	Lodged a Protection visa application.
16 November 2015	Protection visa application refused.
25 November 2015	Applied to the AAT for merits review of the department's decision to refuse his Protection visa application.
23 December 2015	AAT affirmed original decision.
20 April 2016	Requested ministerial intervention under s 417 for the Minister to substitute a more favourable decision.
20 May 2016	Found not to meet the guidelines for referral to the Minister under s 417.

1 September 2016	Found to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa. This decision was based on the advice of International Health and Medical Services (IHMS) that Mr X required extensive care for his physical needs, not appropriate to a detention centre environment.
12 September 2016	Mr X's case was referred to the Minister under ss 195A and 197AB and on 16 September 2016 the ministerial submission under s 195A was returned un-actioned.  On 19 September 2016 Mr X was assessed by IHMS and found to be fit for travel. The consideration of his case under ss 195A and 197AB was subsequently finalised without referral to the Minister.
22 April 2017	The department advised that as Mr X has no matters before the department, the courts or tribunals, he is on an involuntary removal pathway. The department is working with the authorities of Country A to obtain a travel document for Mr X and advised that his removal is protracted due to his medical conditions.  The department further advised that Mr X would not be referred to the Minister under s 195A until all removal processes had been exhausted.
19 October 2017	Found not to meet the guidelines under s 195A.

### **Criminal history**

Mr X has an extensive criminal record in Australia and has been convicted of numerous offences, including firearm possession, drug possession and property damage.  The department advised that Mr X also has a minor criminal record in Country B.	
March 2001	Convicted of two counts of manslaughter and sentenced to 10 years imprisonment.
July 2013	Convicted of 17 counts of dishonestly obtaining financial advantages and sentenced to one year imprisonment.
September 2014	Convicted of taking part in manufacturing a prohibited drug and placed on a suspended sentence of six months imprisonment.

## Health and welfare

IHMS advised that Mr X received treatment for mobility concerns related to knee pain, obesity and shortness of breath and requires mobility aids. Mr X was diagnosed with severe osteoarthritis in his knees in September 2015, but declined a referral for physiotherapy and has been non-compliant with prescribed medication. In June 2016 Mr X underwent investigative testing and was diagnosed with severe spinal canal stenosis secondary to a disc bulge. He subsequently underwent spinal surgery on 22 July 2016 and remained at a rehabilitation clinic until 29 August 2016. In June 2017 he suffered soft tissue injuries following a fall, but declined a referral for physiotherapy. He also received treatment for congestive cardiac failure, burns and a fungal infection. His condition is reviewed weekly by an IHMS nurse and he has a full-time carer.

Mr X also presented with low mood, disturbed thoughts and frustration related to his immigration pathway. Mr X has declined referrals for counselling and a prescription for antidepressant medication, but continues to be reviewed by a psychiatrist. He was assessed by a neurologist in July 2016 after investigative testing identified indicators of Parkinson's disease, however the neurologist ruled out this diagnosis. In November 2016 he was diagnosed with an adjustment disorder with depressed mood and in June 2017 a psychiatrist reported that he was irritable and angry due to his limited autonomy in the detention centre environment. In August 2017 a general practitioner noted that his mental health had improved since he was provided with a full-time carer.

On 1 July 2016 an IHMS medical director strongly recommended that an alternative placement be found for Mr X outside the immigration detention facility environment as his prognosis would improve significantly with expert nursing home care available in the community.

2 June 2016 and 9 June 2016	Transported to a hospital emergency department after presenting with aching limbs and numbness.
21 June 2016	Transported to a hospital emergency department following a fall.
11 September 2016	An Incident Report recorded that Mr X was transported to hospital by ambulance after he suffered a burn.
16 December 2016	An Incident Report recorded that Mr X was transported to hospital by ambulance following a fall.

## Other matters

15 July 2016 – 18 April 2017	The department was notified that Mr X lodged complaints with the Australian Human Rights Commission alleging discrimination on the basis of his disability and a breach of his human rights. The department provided multiple responses and the matter remained ongoing at the time of the department's latest report.
21 September 2016	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman (the Office) in relation to the provision of medical care in immigration detention. Mr X reported that IHMS did not consider that he could be treated appropriately within the immigration network and that he should be placed in a nursing home. The department provided multiple responses and advised that Mr X was not being considered for alternative management options because he is on a removal pathway. The complaint was finalised on 2 November 2017.
16 June 2017	Mr X lodged a further complaint with the Office in relation to the provision of medical care in immigration detention. The department provided multiple responses and the complaint was finalised on 1 November 2017.

### **Information provided by Mr X**

During an interview with Ombudsman staff on 6 September 2017 Mr X advised that he arrived in Australia when he was 21 years old and has resided here for more than 40 years. Mr X explained that he is part of this country and believes it would be an injustice for him to be deported. He stated that he is hurt and distressed by the prospect of deportation and his ongoing detention.

Mr X claimed that he broke his neck during a fall in detention and is now half paralysed. He also said that his health is deteriorating and he feels stressed, depressed and anxious.

Mr X stated that he served his sentence in prison and was well-behaved. He alleged that he had been framed by other people and claimed that he did not commit all the crimes he was convicted of, including the drug production offences.

Mr X said that his siblings reside in Australia.

### **Ombudsman assessment/recommendation**

Mr X was detained on 23 April 2015 following the cancellation of his Transitional (Permanent) visa under s 501 and has remained in an immigration detention facility for more than two and a half years.

Mr X lodged a Protection visa on 31 July 2015 and on 16 November 2015 he was found not to be owed protection under the Refugee Convention and the complementary protection criterion.

Mr X has no matters before the department, the courts or tribunals and is on an involuntary removal pathway. The department advised that it is working with the authorities of Country A to obtain a travel document for Mr X and advised that his removal is protracted due to his medical conditions.

The department further advised that Mr X was found to meet the guidelines for referral to the Minister under s 195A for the grant a bridging visa and that this decision was based on IHMS's advice that Mr X required extensive care for his physical needs, not appropriate to a detention centre environment. On 22 April 2017 the department advised that Mr X's case would not be referred to the Minister under s 195A until all removal processes had been exhausted.

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 complex physical health concerns and requires a full-time carer due to his limited mobility. Further, on 1 July 2016 an IHMS medical director strongly recommended that an alternative placement be found for Mr X outside the immigration detention facility environment as his prognosis would improve significantly with expert nursing home care available in the community.

Given the department's advice that Mr X's removal is likely to be protracted and IHMS's advice that Mr X requires extensive care not appropriate to the detention facility environment, the Ombudsman recommends that consideration be given to finding an alternative placement for Mr X that is appropriate for his medical needs.