

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
Year of birth	1984
Ombudsman ID	1002676-O
Date of department's reports	15 May 2017 and 13 November 2017
Total days in detention	912 (at date of department's latest report)

Detention history

16 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.
19 September 2015	Transferred to Facility C.
22 February 2017	Transferred to Facility D.
12 October 2017	Transferred to Facility E.

Visa applications/case progression

Mr X first arrived in Australia on 10 December 2006 on a sponsored family visa. He subsequently departed Australia and arrived again on 9 October 2007 on a prospective marriage visa.	
25 May 2009	Granted a partner visa.
19 April 2010	Mr X was notified that his partner had withdrawn their sponsorship of his application for a permanent partner visa. Mr X provided evidence that the circumstances of the relationship breakdown included domestic violence, in which he was the victim.
18 July 2011	Granted a Partner (Residence) visa.
22 April 2015	Partner (Residence) visa cancelled under s 501 following criminal convictions.
14 January 2016	A delegate of the Minister decided not to revoke the cancellation of his visa under s 501.
24 March 2017	The Administrative Appeals Tribunal (AAT) affirmed the delegate's decision not to revoke the cancellation of his visa under s 501.
21 April 2017	Applied to the Federal Court (FC) for judicial review.
13 November 2017	The Department of Home Affairs (the department) advised that the FC adjourned Mr X's case to 8 December 2017 as it was affected by a matter ¹ before the High Court.

¹ *BCR16 v Minister for Immigration and Border Protection* [2017] FCAFC 96

Criminal history

March 2014	Convicted of multiple offences, including burglary, theft and making threats to kill. He was sentenced to one year imprisonment.
23 May 2014	Released from a correctional facility on parole.
15 October 2014	Returned to a correctional facility after he returned a positive drug test while on parole.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of chronic pain related to an injury he sustained in 1998. Mr X reported that he experiences extreme pain that impacts his daily life and mental health, and disclosed a history of substance abuse related to this pain. In October 2015 an addiction specialist advised that Mr X was primarily experiencing chronic pain and psychological distress rather than addiction issues and referred him to a pain specialist.</p> <p>Mr X was regularly reviewed by a pain specialist from October 2015 to determine an appropriate prescription for pain relief medication and significant improvements were noted. Mr X continues to attend monthly reviews and his condition is closely monitored by a general practitioner. In September 2016 he underwent investigative testing for his injuries and was reviewed by a neurosurgeon. The tests identified no significant concerns and ongoing pain management was recommended. In February 2017 the pain specialist reported that Mr X's mood and ability to manage daily life will continue to be fragile while he remains in immigration detention and advised that his mental health would improve if he no longer resided in detention.</p> <p>Mr X attempted suicide, self-harmed and threatened self-harm on multiple occasions in response to his chronic pain. In September 2015 he attempted suicide and was involuntarily admitted to hospital under mental health legislation. He was subsequently transferred to a psychiatric unit where he attempted suicide again. IHMS reported that his mental health has improved since his pain has been better managed, however he remains impulsive when unsettled. He continues to regularly engage with the mental health team (MHT).</p> <p>In July 2015 Mr X was transferred to hospital after experiencing a possible seizure. He disclosed that he had experienced seizures as a child and previously took medication to control them. He accepted a prescription for medication but declined a referral to a neurologist.</p> <p>In May 2016 Mr X underwent a neuroscience assessment and investigative testing to assess his cognitive function. The tests identified that Mr X had low IQ and experienced difficulties with problem-solving and completing activities. The neuroscience assessment reported that this was likely related to his past injury and substance abuse and that he was vulnerable to reacting before fully contemplating the consequences of his behaviour.</p> <p>In July 2016 pathology testing confirmed that Mr X had contracted hepatitis C after he used another detainee's razor blade to self-harm. He underwent follow up testing which indicated that his immune system had cleared the virus, however further testing was required for confirmation.</p> <p>Mr X also received treatment for physical health concerns, including a perforated ear drum and blocked nose. He was reviewed by an ear, nose and throat specialist and in August 2016 he underwent a reconstructive surgical procedure on his nose.</p>	
August 2015	An Incident Report recorded that Mr X attempted suicide.
September 2015 – January 2017	IHMS advised that Mr X was admitted to hospital for treatment on four occasions following incidents of self-harm.
October 2015 – October 2016	IHMS advised that Mr X was admitted to hospital on four occasions after he attempted suicide.

May 2016	Incident Reports recorded that Mr X self-harmed.
January 2017	IHMS advised that Mr X self-harmed.

Other matters

Mr X advised the department that he married an Australian citizen in 2008 and their marriage ended in 2010.

Ombudsman assessment/recommendation

Mr X was detained on 16 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 Partner (Residence) visa was cancelled under s 501 on 22 April 2015. On 14 January 2016 a delegate of the Minister decided not to revoke the cancellation of his visa and on 24 April 2017 the AAT affirmed the delegate's decision.

At the date of the department's latest report 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 immigration detention may pose. IHMS advised that Mr X receives treatment for complex mental and physical health concerns, including chronic pain, and requires ongoing support from a pain specialist. In February 2017 the pain specialist reported that Mr X's mood and ability to manage daily life will continue to be fragile while he remains in immigration detention and advised that his mental health would improve if he no longer resided in detention.

The Ombudsman notes with serious concern that Mr X has attempted suicide and self-harmed on numerous occasions in response to his chronic pain. IHMS advised that Mr X required hospitalisation on multiple occasions, including an involuntary admission under mental health legislation.

The Ombudsman also notes that Mr X was convicted of criminal offences in March 2014 and served one year imprisonment.

In light of Mr X's complex health concerns and history of self-harm, the Ombudsman recommends that the department consider placing Mr X in an alternative detention placement that is appropriately tailored to manage his specific needs, such as a designated alternative place of detention in the community.