

# ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TBALING 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>	1990
<b>Ombudsman ID</b>	1002701-O
<b>Date of department's reports</b>	30 June 2017 and 29 December 2017
<b>Total days in detention</b>	912 (at date of department's latest report)

## Detention history

1 July 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 B.
3 July 2015	Transferred to Facility C.
10 September 2015	Transferred to Facility D.
13 November 2015	Transferred to a correctional facility. <sup>1</sup>
6 July 2016	Transferred to Facility E.
25 January 2017	Transferred to Facility C.
29 November 2017	Transferred to a correctional facility. <sup>2</sup>

## Visa applications/case progression

Mr X arrived in Australia with his family on 22 October 2003 on a refugee visa.	
23 July 2013	Issued with a Notice of Intention to Consider Cancellation of his visa under s 501 following criminal convictions.
23 June 2015	Refugee visa cancelled under s 501 following criminal convictions.
7 July 2015	Mr X lodged a Request for Revocation of Cancellation. On 14 July 2015 the request was deemed invalid as revocation is unavailable for decisions made under s 501(2).
27 January 2015	The Department of Home Affairs (the department) finalised an International Treaties Obligations Assessment, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
11 November 2016	The Federal Court dismissed Mr X's application for judicial review of the cancellation of his visa.
6 March 2017	Lodged a Protection visa application.

<sup>1</sup> On 30 June 2017 the department advised that Mr X was placed at a correctional facility following his involvement in a riot at Facility D. He remained in detention under s 189(1) while placed in a correctional facility.

<sup>2</sup> On 29 December 2017 the department advised that Mr X continued to be detained under s 189(1) while he was placed in a correctional facility serving a custodial sentence.

9 October 2017	Protection visa application refused as he had been convicted of a serious crime and was considered to be a danger to the Australian community.
10 October 2017	Applied to the Administrative Appeals Tribunal for merits review.
29 December 2017	The department advised that Mr X is considered a person of interest to the department in relation to his rioting offences committed while in detention.

### **Criminal history**

The department advised that Mr X has been convicted of multiple offences, including driving offences and resisting police.	
March 2012	Convicted of an assault offence and sentenced to two years and 50 weeks imprisonment.
November 2017	Convicted of a rioting offence committed while in immigration detention in October 2015 and November 2015 at Facility D. He was sentenced to eight months imprisonment.

### **Health and welfare**

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of violence related to his childhood in Country A and isolation associated with being a refugee. In November 2016 and December 2016 Mr X was reviewed by a psychiatrist and diagnosed with major depression. He was prescribed with medication and referred to specialist counselling for psychoeducation. The psychiatrist recommended that Mr X be placed in the community as the detention centre environment intensified his past trauma and had caused his mental health to deteriorate. In February 2017 the psychiatrist advised that the speedy resolution of Mr X's immigration status would benefit his mental health and again recommended that he be placed in the community. In May 2017 he was diagnosed with a persistent depressive disorder related to his prolonged detention, incarceration and underlying personality vulnerabilities.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health concerns, including hepatitis B and a gastroenterological condition. He underwent regular investigative testing and was monitored by a general practitioner.</p> <p>Following his transfer to a correctional facility, Mr X's health and welfare is managed by the Department of Corrective Services, State F.</p>	
---	--

### **Detention Incidents**

Incident Reports recorded that Mr X allegedly displayed abusive and aggressive behaviour on multiple occasions.	
1 October 2017	An Incident Report recorded that Mr X allegedly assaulted another detainee and was subsequently placed in alternative accommodation.

### **Other matters**

<p>Mr X's mother and three of his siblings are Australian citizens.</p> <p>Mr X's brother, Mr Y, was also convicted of an assault offence in March 2012 and sentenced to four years imprisonment. Mr Y's visa was cancelled under s 501 on 23 October 2014 and he is the subject of Ombudsman assessment 1002790-O.</p>	
---	--

## Ombudsman assessment

Mr X was detained on 1 July 2015 following the cancellation of his visa under s 501 and has remained in immigration detention, both in a detention facility and correctional facility, for more than two and a half years.

Mr X lodged a Protection visa on 6 March 2017 and on 9 October 2017 his Protection visa application was refused. At the time of the department's latest report Mr X was awaiting the outcome of merits 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 has advised that Mr X received treatment for a persistent depressive disorder related to his prolonged detention and incarceration. In December 2016 a psychiatrist recommended that Mr X be placed in the community as the detention centre environment intensified his past trauma and caused his mental health to deteriorate. Further, in February 2017 a psychiatrist advised that the speedy resolution of Mr X's immigration status would benefit his mental health and again recommended that he be placed in the community.

The Ombudsman further notes that on 29 November 2017 Mr X was convicted of a rioting offence committed while in immigration detention. He is currently serving an eight month term of imprisonment.