

## 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 42 months (three and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1981
<b>Ombudsman ID</b>	1002672-O
<b>Date of department's reports</b>	15 May 2017, 13 November 2017 and 24 November 2017 <sup>1</sup>
<b>Total days in detention</b>	1,276 (at date of department's latest report)

### Detention history

March 2001	Detained under s 189(2) of the <i>Migration Act 1958</i> after arriving in Australia by sea.
March 2001	Transferred to Facility B.
February 2002	Granted a Temporary Protection visa (TPV) and released from immigration detention.
May 2015	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Facility C.
October 2015	Transferred to Facility D.
April 2016	Transferred to Facility E.

### Visa applications/case progression

July 2001	Lodged a Protection visa application that was refused in November 2001.
January 2002	The Refugee Review Tribunal remitted Mr X's case for reconsideration.
February 2002	Granted a TPV after his Protection visa application was deemed to be a TPV application. He was granted a further TPV in October 2005.
September 2008	Lodged a third Protection visa application.
September 2008	Granted a bridging visa that ceased in July 2009.
December 2008	Granted a Resolution of Status visa.
June 2009	Third Protection visa application refused as Mr X had been granted a Resolution of Status visa.
May 2015	Resolution of Status visa mandatorily cancelled under s 501.

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<sup>1</sup> In response to an enquiry from the Office of the Commonwealth Ombudsman about an apparent breach of reporting timeframes, the department advised that it did not meet its statutory obligations in relation to providing Mr X's 24-month and 30-month reports under s 486N. It further advised that this was due to an information technology error which precluded Mr X's first period of detention.

June 2015	Mr X lodged a Request for Revocation of Cancellation. In November 2016 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa under s 501.
February 2016	The Department of Home Affairs (the department) notified Mr X of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
May 2016	The department finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
June 2016	The department notified Mr X of the commencement of a supplementary ITOA.
October 2016	The supplementary ITOA was finalised, determining Mr X's case does engage Australia's <i>non-refoulement</i> obligations.
August 2017	The Federal Court dismissed Mr X's application for judicial review of the non-revocation decision.
August 2017	Applied to the Full Federal Court (FFC) for judicial review. The matter was adjourned on two occasions and a hearing was scheduled for February 2018.

### Criminal history

January 2005 – January 2014	Convicted of multiple offences.
January 2014	Convicted of two offences and sentenced to a cumulative period of one year and four months imprisonment.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X engaged with a general practitioner (GP) and the mental health team for the management of an adjustment disorder with depressed mood. In August 2015 a psychiatrist noted that Mr X displayed symptoms of a significant depressive response related to situational stress. In October 2016 a GP recommended that Mr X be transferred from Facility E as the lack of family contact was causing him and his family severe distress and he had expressed thoughts of suicidal ideation. In December 2016 Mr X was prescribed with antidepressant medication after presenting with anxiety, rumination and poor sleep relating to his family separation and immigration pathway. In August 2017 Mr X threatened self-harm and upon IHMS review expressed his distress at his ongoing separation from his family.</p> <p>IHMS further advised that Mr X received treatment for a number of medical conditions. He underwent specialist testing in 2015 which did not indicate medical concerns.</p>	
August 2017 – November 2017	Incident Reports recorded that Mr X threatened self-harm on five occasions.
August 2017 – November 2017	Incident Reports recorded that Mr X self-harmed on three occasions.

## Detention incidents

May 2015 – November 2017	Incident Reports recorded that Mr X was allegedly involved in multiple behavioural incidents, including displaying aggressive and abusive behaviour.
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## Other matters

Mr X's partner and children reside in State F.
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## Information provided by Mr X

<p>During an interview with Ombudsman staff in February 2018 Mr X advised that his case was currently before the FFC and he had a lawyer representing him. He stated that a hearing was scheduled for the end of February.</p> <p>Mr X advised that his partner and children reside in City G and he had not seen them since his transfer to Facility E. He explained that he last spoke with his children by telephone six months ago and that he could not speak with them more frequently because it is difficult for them to understand why the family is separated. He reported that he had requested to be transferred to City G multiple times but he had been told that a transfer was not possible. He explained that if he was transferred to City G then his partner and children could visit him.</p> <p>Mr X advised that IHMS was not helpful in supporting his mental health. He said that he was previously placed in isolated accommodation when he presented with mental health concerns.</p>
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## Ombudsman assessment/recommendation

<p>Mr X was first detained in March 2001 after arriving in Australia by sea and then re-detained in May 2015. He has remained in an immigration detention facility for a cumulative period of more than three and a half years.</p> <p>Mr X's TPV was mandatorily cancelled under s 501 in May 2015 and in November 2016 the Assistant Minister decided not to revoke the cancellation of his visa. At the time of the department's latest report Mr X was awaiting the outcome of judicial review.</p> <p>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 was diagnosed with an adjustment disorder with depressed mood and has displayed symptoms of a significant depressive response relating to situational stress. In October 2016 a GP recommended that Mr X be transferred from Facility E as his continued separation from his family was causing him and his family severe distress.</p> <p>The Ombudsman also notes that in October 2016 a supplementary ITOA was finalised which determined that Mr X's case does engage Australia's <i>non-refoulement</i> obligations.</p> <p>In light of the length of time Mr X has remained in immigration detention and his continued separation from his family, the Ombudsman recommends that Mr X be transferred to Facility C or Facility D.</p>
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