

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 24 months (two years).

Name	Mr X
Citizenship	Country A and Country B, born in Country C
Year of birth	1982
Ombudsman ID	1002829-O
Date of department's report	17 January 2018
Total days in detention	730 (at date of department's report)

Detention history

23 July 2014	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa. He was transferred to Facility D.
15 May 2015	Released from immigration detention and placed into police custody.
13 August 2015	Re-detained under s 189(1) after being granted bail. He was transferred to Facility D.
19 August 2015	Released from immigration detention and placed into police custody.
17 November 2016	Re-detained under s 189(1) after being granted bail. He was transferred to Facility D.
8 March 2016	Transferred to Facility E.
16 June 2016	Transferred to Facility D.
27 July 2017	Transferred to Facility E.
10 January 2018	Transferred to Facility D.

Visa applications/case progression

Mr X arrived in Australia on 16 January 2013 on a work visa. He subsequently departed Australia on two occasions before returning to Australia in September 2013.	
18 July 2014	Mr X's employer and sponsor advised the Department of Home Affairs (the department) that it had terminated Mr X's employment and was withdrawing its sponsorship following concerns regarding his conduct. The department notified the police.
23 July 2014	Work visa cancelled under s 116.
24 July 2014	Requested removal from Australia.
5 August 2014	Issued a Criminal Justice Stay Certificate (CJSC) preventing his removal from Australia while the police investigated the allegations against him.
7 August 2014	The department refused to grant Mr X a Criminal Justice Stay visa (CJSV).
24 February 2015	The Minister declined to intervene under s 195A to grant Mr X a bridging visa.

10 February 2017	Issued a further CJSC.
15 February 2017	CJSC was cancelled.
10 April 2017	The department again refused to grant Mr X a CJSV.

Other legal matters

15 May 2015	Charged with using a carriage service to access child pornography. The charges were dismissed on 9 May 2016.
17 November 2016	Granted bail on the condition that he was held at Facility D, was not accompanied by any person under 18 years of age and has no access to the internet other than for the preparation of legal proceedings.
19 August 2016	Charged with five child sex offences. A trial was scheduled to commence in a district court in early 2018.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was diagnosed with an adjustment disorder with anxious mood in September 2014. A psychiatrist noted that he was fearful about his safety in immigration detention and was experiencing brief psychosis related to stress. He was prescribed with medication for anxiety and insomnia, but later declined to take the medication. In December 2016 he was reviewed by a psychologist and presented with stress. He was referred to a psychiatrist in January 2017 and no further concerns were raised.

Mr X was transferred to hospital in November 2014 after presenting with chest pain. He underwent investigative testing and was diagnosed with muscular pain. He subsequently reported that he experienced chest tightness when stressed and anxious.

Mr X underwent surgery to remove his gallbladder in September 2016 while in criminal custody. Following his return to immigration detention, he received treatment for an associated infection.

IHMS further advised that Mr X received treatment for ear concerns, a stomach bacterial infection and a blood condition.

Detention incidents

13 December 2016 and 24 December 2016	An Incident Report recorded that Mr X was allegedly assaulted by another detainee.
August 2017	<p>An Incident Report recorded that a detainee alleged that Mr X had been watching child pornography. The department advised that the incident was referred to the police and the matter remained ongoing at the time of the department's report.</p> <p>An Incident Report also recorded that Mr X alleged that he was sexually assaulted by a Serco officer during a pat down search. The department advised that the incident was referred to the police for investigation and on 14 September 2017 the police advised that no further investigation was required.</p>

Other matters

18 March 2017	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman (the Office) in relation to his immigration detention. He raised concerns about his personal safety at Facility D, his detention placement at Facility E and the transfer of his property between a correctional facility and Facility D. The complaint continued to be investigated by the Office at the time of drafting this assessment.
15 May 2017	The department was notified that Mr X had lodged a complaint with the Australian Human Rights Commission (AHRC). On 10 October 2017 the department provided a response. The matter remained ongoing at the time of the department's report.
8 August 2017	Mr X lodged a complaint with the Office in relation to his immigration detention. He raised concerns about restrictions on his capacity to have visitors at Facility E and his access to mobile phones at Facility E. The complaint continued to be investigated by the Office at the time of drafting this assessment.
18 August 2017	Mr X lodged a complaint with the Office in relation to the confiscation of his personal property during a room search and alleged that he was sexually assaulted by a Serco officer in August 2017. The matter was investigated and on 21 December 2017 the complaint was finalised.
9 October 2017	The department was notified that Mr X had lodged a complaint with the AHRC. The department was preparing a response to the AHRC at the time of its report.

Case status

Mr X was detained on 23 July 2014 following the cancellation of his visa and has remained in an immigration detention facility for a cumulative period of more than two years.

Mr X's work visa was cancelled under s 116 on 23 July 2014 after his employer withdrew its sponsorship following concerns regarding his conduct. He was subject to a CJSC preventing his removal from Australia from 5 August 2014 to 15 February 2017.

At the time of the department's report, Mr X was awaiting the commencement of a trial in relation to criminal offences.