

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 36 months (three years).

Name	Mr X
Citizenship	Country A
Year of birth	1983
Ombudsman ID	1002588-O
Date of DIBP's reports	7 February 2017 ¹ and 26 April 2017
Total days in detention	1,094 (at date of DIBP's latest report)

Detention history

20 December 1999	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Australia by sea with his father, Mr Y. ² He was transferred to Facility B. ³
22 September 2000	Granted a Temporary Protection visa (TPV) and released from detention.
31 January 2015	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Facility C.

Visa applications/case progression

18 May 2000	Mr X's father lodged a TPV application.
22 September 2000	Mr X was granted a TPV as a dependant on his father's application which ceased on 2 September 2003.
4 April 2002	Lodged a Protection visa application. Mr X was granted a bridging visa.
2 September 2003	Lodged a second TPV application which was granted on 20 September 2003 and ceased on 4 August 2006.
27 October 2005	Protection visa application was refused. Lodged an application for a Return Pending visa which was granted on the same day.
7 November 2005	Applied to the Refugee Review Tribunal (RRT) ⁴ for merits review. The matter was remitted for reconsideration on 7 February 2006.
4 August 2006	Granted a third TPV which ceased on 9 July 2008.
20 March 2008	Lodged a second Protection visa application and was granted a bridging visa on the same day.

¹ The department advised that it did not meet its statutory obligations in relation to Mr X as a result of the circumstances of his place of arrival and detention placement upon initial detention not being recorded in the department's current information technology systems. As a result his cumulative days in detention have been manually calculated.

² Mr Y departed Australia in January 2001 after being issued a travel document by authorities of Country A under a different name.

³ The department advised that upon interrogation of manual records it appears that Mr X was located at Facility B upon initial detention.

⁴ On 1 July 2015 the Migration Review Tribunal and RRT were merged into the AAT.

9 July 2008	Granted a Protection visa.
13 February 2014	Following criminal charges Mr X was issued with a Notice of Intention to Consider Cancellation of his Protection visa.
19 January 2015	Protection visa was mandatorily cancelled under s 501.
12 February 2015	Lodged a request for revocation of the cancellation decision.
29 January 2016	The Department of Immigration and Border Protection (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.
23 November 2016	The department finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
23 December 2016	Request for revocation was declined.
15 February 2017	Applied to the Administrative Appeals Tribunal (AAT) for merits review of the decision to cancel his Protection visa under s 501.

Criminal history

20 December 2013	Convicted of an armed robbery offence and sentenced to two years and eight months imprisonment with a non-parole period of one year and one month.
18 July 2014	Convicted of a stalking offence and sentenced to six months imprisonment.
The department advised that Mr X has been further convicted of various drug, theft, property, driving, assault, and harassment and intimidation offences. He has received fines, bonds of up to 18 months and imprisonment of up to 39 days for these offences.	

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of bipolar disorder and was prescribed with medication after reporting symptoms of anxiety, poor sleep, mood swings, and negative rumination. Mr X continued to take his prescribed medication but refused to attend psychiatric consultations.</p> <p>IHMS further advised that Mr X has a history of back pain for which he took opioid pain relief medication for an extended period. Due to his development of a dependence on this medication, he was placed on a methadone program while held in a correctional facility and this was continued on his return to immigration detention. He underwent a number of investigations for his back pain and was referred for physiotherapy, however he did not attend scheduled appointments.</p>

Information provided by Mr X

<p>During an interview with Ombudsman staff at Facility C in September 2017 Mr X stated that he had been sleeping on the floor outside of his shared dormitory because the other detainees were not letting him sleep in the dormitory. He was very distressed about this and stated that he wanted to be placed back in a single room as he did not understand why he had been moved into a dormitory. He stated that his mental health had become much worse after being moved, and that he was now having a lot of problems.</p> <p>He advised that he did not want to engage with a psychiatrist and that he felt like requesting to see IHMS was a slow process so most of the time he did not feel like it was worth it.</p>
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Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in detention for more than three years. At the time of the department's latest report Mr X was awaiting the outcome of merits review.

The Ombudsman notes that Mr X has a history of bipolar disorder and reported distress and concern regarding his placement in a shared room. The Ombudsman recommends that the department assess whether it would be appropriate to place Mr X in a single room.