

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 more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1975
Ombudsman ID	2000005-O
Date of department's reports	13 June 2017 and 12 December 2017
Total days in detention	912 (at date of department's latest report)

Detention history

14 June 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.
23 March 2017	Transferred to Facility C.

Visa applications/case progression

Mr X arrived in Australia on 16 September 2009 on a Refugee visa.	
9 June 2015	Refugee visa mandatorily cancelled under s 501.
15 June 2015	Mr X lodged a Request for Revocation of Cancellation. On 22 November 2016 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa under s 501.
7 November 2016	The Department of Home Affairs (the department) notified Mr X that an International Treaties Obligations Assessment (ITOA) determined that his case engages Australia's <i>non-refoulement</i> obligations.
20 December 2016	Applied to the Federal Circuit Court for judicial review. On 6 February 2017 the matter was transferred to the Federal Court (FC).
12 September 2017	The FC set aside the Assistant Minister's decision after identifying a probable error of law and remitted the matter to the department for reconsideration. The department recommenced consideration of Mr X's Request for Revocation of Cancellation of his Refugee visa under s 501.
13 October 2017	The department advised that Mr X was not referred to the Minister for consideration under s 195A for the grant of a bridging visa as referral was considered inappropriate following the decision of the FC.

Criminal history

May 2012	Convicted of false imprisonment, recklessly causing injury, theft and contravening a family violence order. He received a community correction order for one year to perform 60 hours of unpaid community work.
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May 2014	Convicted of making threats to kill, contravening a family violence order, drug trafficking, breach of a community correction order, driving offences and resisting police. He was sentenced to multiple terms of imprisonment cumulatively exceeding a total of one year.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X was referred for specialist counselling after disclosing a history of torture and trauma. In December 2015 he reported to a psychiatrist that he was experiencing flashbacks of traumatic memories and was prescribed with medication. Upon psychiatric review in May 2017 it was reported that Mr X was experiencing symptoms of post-traumatic stress disorder (PTSD) and that his symptoms were likely to deteriorate in immigration detention. An IHMS psychiatrist also advised that Mr X's history of aggression and trauma exacerbate his responses to perceived threats.</p> <p>IHMS further advised that Mr X received treatment for hepatitis C, drug addiction, type 2 diabetes and back pain.</p>	
16 July 2015 – 9 July 2017	Incident Reports recorded that Mr X threatened self-harm on seven occasions.
11 November 2015 – 11 May 2016	Incident Reports recorded that Mr X self-harmed on four occasions.

Detention incidents

<p>Incident Reports recorded that Mr X was allegedly involved in numerous incidents in detention, including physical altercations with other detainees, threatening to assault detainees and detention centre staff, and displaying abusive and aggressive behaviour towards detainees and detention centre staff.</p>
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Other matters

<p>Mr X has three minor children in Australia. The department advised that Mr X is estranged from his wife.</p>

Ombudsman assessment

<p>Mr X was detained on 14 June 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than two and a half years.</p> <p>Mr X's Refugee visa was cancelled under s 501 on 9 June 2015. On 22 November 2016 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>On 7 November 2016 the department notified Mr X that an ITOA determined that his case engages Australia's <i>non-refoulement</i> obligations.</p> <p>On 12 September 2017 the FC set aside the Assistant Minister's decision after identifying a probable error of law and remitted the matter to the department for reconsideration. The department recommenced consideration of Mr X's Request for Revocation of Cancellation of his Refugee visa.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose. IHMS has advised that Mr X experiences symptoms of PTSD and that his symptoms are likely to deteriorate in immigration detention.</p> <p>The Ombudsman further notes the department's advice that Mr X was not referred to the Minister for consideration under s 195A for the grant of a bridging visa as referral was considered inappropriate following the decision of the FC.</p>
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