

## 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 two years.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1971
<b>Ombudsman ID</b>	1002802-O
<b>Date of department's report</b>	20 November 2017
<b>Total days in detention</b>	730 (at date of department's report)

### Detention history

January 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa under s 501. In February 2015 he was transferred to Facility B.
September 2015	Transferred to Facility C.
October 2015	Mr X was released from immigration detention when it was determined that the cancellation of his visa was invalid.
September 2016	Re-detained under s 189(1) following the cancellation of his visa under s 501. He was transferred to Facility D.
March 2017	Transferred to Facility C.

### Visa applications/case progression

Mr X arrived in Australia with his family in March 1979 with incoming passenger cards that indicated that the purpose of travel was to migrate to Australia.	
August 2013	Mr X was assessed by the Australian Government Solicitor as a likely holder of a Visa E.
August 2013	Issued with a Notice of Intention to Consider Cancellation (NOICC) relating to a Visa F, however the Department of Home Affairs (the department) advised in November 2017 that Mr X never held a Visa F.
October 2014	Received a further notice informing him that the NOICC related to a Visa G. The department further advised in November 2017 that Mr X never held a Visa G.
December 2014	A Visa G was mandatorily cancelled under s 501. On the same day Mr X received an interim notification of the visa cancellation.
January 2015	Issued with a formal notice of the cancellation of a Visa G under s 501. In January 2015 Mr X lodged a request for revocation of the cancellation of the visa.
October 2015	The cancellation of Mr X's visa was deemed invalid as he did not hold a Visa G.

November 2015	Issued with a further NOICC of his Visa E.
August 2016	Visa E cancelled under s 501.
October 2016	Applied to the Federal Court for review of the decision to cancel his Visa E.

**Criminal history**

The department advised that Mr X was convicted of numerous offences between 1992 and 2008 with penalties including imprisonment for up to four years.	
May 2009	Convicted of multiple offences and sentenced to a total of eight years imprisonment.
July 2014	Convicted of multiple offences and sentenced to four months imprisonment.

**Health and welfare**

International Health and Medical Services advised that Mr X was diagnosed with a medical condition but declined care until April 2017. In June 2017 he attended a telehealth review with a specialist and was awaiting an appointment for further testing.

**Other matters**

The department advised that Mr X has an estranged partner and a child both of whom are Australian citizens, and that Mr X's mother and siblings are believed to reside in Australia.

**Ombudsman assessment**

Mr X was first detained in January 2015 following the cancellation of a Visa G under s 501. He has remained in an immigration detention facility for a cumulative period of more than two years.

The department cancelled Mr X's Visa G in January 2015 however this decision was deemed invalid in October 2015 as a result of Mr X having never been the holder of a Visa G. Mr X's Visa E was cancelled under s 501 in August 2016.

The Ombudsman notes that Mr X was issued with a NOICC on two occasions in relation to visas which he did not hold and was detained from January 2015 to October 2015 following the cancellation of a visa under s 501 which was later deemed invalid.

At the time of the department's report Mr X was awaiting the outcome of judicial review.