

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the eleventh s 486O assessment on Mr X who has remained in immigration detention for more than 120 months (10 years). The previous assessment 000510-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1961
<b>DIBP ID</b>	67475113761
<b>Ombudsman ID</b>	000510-O1
<b>Date of DIBP's reports</b>	19 December 2016 and 8 June 2017
<b>Total days in detention</b>	3,643 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous assessment (000510-O), Mr X has remained at Facility B.
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### Recent visa applications/case progression

17 June 2016	Requested voluntary removal.
10 November 2016	Mr X was issued with a Notice of Intention to Consider Refusal of his Protection visa application under s 501 of the <i>Migration Act 1958</i> . He provided a response on 23 December 2016.
24 November 2016	Withdrew his request for voluntary removal.
19 December 2016	The Department of Immigration and Border Protection (the department) advised that the referral of Mr X's case for an assessment against the guidelines under s 195A remains on hold pending specialist medical advice.
25 January 2017	Mr X's case was referred to the Minister under s 501 for his consideration to refuse Mr X's Protection visa application.
8 June 2017	<p>The department advised that ministerial submissions under ss 501 and 195A were placed on hold pending an investigation of Mr X's case in light of the Federal Court's (FC) judgment of 3 May 2017<sup>1</sup> which found that s 197C abrogates Australia's <i>non-refoulement</i> obligations under international law.</p> <p>The department also advised that, depending on the outcome of that investigation, the ministerial submission under s 195A may be held further while the Minister considers Mr X's case under s 501.</p>

<sup>1</sup> *DMH16 v Minister for Immigration and Border Protection* [2017] FCA 448.

### Recent criminal history

24 August 2016	Mr X was charged with causing harm to a commonwealth official, damaging commonwealth property, arson and weapons offences. He was taken into criminal custody and subsequently transferred to hospital after experiencing cardiac related issues. On 25 August 2016 he was granted bail and returned to Facility B.
8 June 2017	The department advised that Mr X appeared before a court and the matter was adjourned to 16 August 2017.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X's mental health continued to be monitored by a psychiatrist and the mental health team. He presented with situational stress, frustration and thoughts of self-harm related to concerns that his paintings had been confiscated by detention centre staff. In August 2016 he was referred for a neurocognitive assessment after presenting with difficulty concentrating and remembering simple tasks.</p> <p>In March 2017 Mr X was diagnosed with narcissistic personality disorder after a psychiatrist noted that he was suspicious, paranoid and forgetful. He was referred for investigative testing to rule out medical causes for his symptoms, including dementia, however he refused to undergo testing. In April 2017 Mr X accepted a prescription for antipsychotic and antidepressant medication and a psychiatrist noted that he was competent to refuse investigative testing.</p> <p>IHMS further advised that Mr X continued to receive treatment for type 2 diabetes, however his condition was poorly controlled because he refused to monitor his blood glucose levels and was not compliant with diet and exercise recommendations. Mr X was referred to an endocrinologist for assessment, however he refused to attend as he would be required to wear restraints during transfer to the consultation.</p> <p>On 24 August 2016 Mr X suffered a heart attack and was transferred to hospital for specialist treatment. He was placed on a cardiovascular disease care plan and referred to a cardiologist.</p> <p>Mr X was also provided with treatment for high blood pressure, chronic back pain, a skin lesion, liver concerns and gastroenterological issues. He was scheduled to undergo a colonoscopy and review by a general surgeon on 12 April 2017, however he declined to attend.</p>	
28 August 2016 and 16 September 2016	Incident Reports recorded that Mr X threatened self-harm.
2 June 2017	An Incident Report recorded that Mr X self-harmed.

### Recent detention incidents

<p>Incident reports recorded that Mr X was allegedly involved in numerous behavioural incidents during this assessment period, including assaulting detention centre staff, displaying threatening and abusive behaviour towards other detainees and detention centre staff and possessing a weapon.</p>	
31 May 2017	An Incident Report recorded that Mr X allegedly assaulted a Serco officer. The incident was referred to the police for investigation.

### Information provided by Mr X

During an interview with Ombudsman staff at Facility B in September 2017 Mr X reported that he does not understand what is happening with his immigration case. He said that he is unable to return to Country A or Country C as he would be unsafe in both countries.

Mr X advised that his physical and mental health is deteriorating in detention. He reported that he is gaining weight because there is no exercise equipment appropriate for him and he suffers from back pain related to past experiences of torture. He said that his diabetes is worsening and he has skin issues from his insulin injections. He also advised that while he has no concerns with IHMS, he does not like attending medical appointments because he has to wear restraints.

Mr X said that he enjoys painting and creating traditional artworks. However, he claimed that around 40 of his paintings went missing during a room search in 2010 and other paintings have gone missing over the past few years. He claimed that Serco is responsible and that he had lodged a number of complaints, including with the police, but he believed that no action had been taken.

### Ombudsman assessment/recommendation

Mr X has been held in an immigration detention facility for an unbroken period of more than 10 years and remains the longest-serving detainee in immigration detention.

The Ombudsman's previous assessment (000510-O) recommended that the processing of Mr X's Protection visa application and consideration of Mr X for a bridging visa be expedited if either of these matters has not yet been determined.

On 1 March 2017 the Minister advised that Mr X's case has been referred for his consideration under s 501 and that the department was preparing a submission for his consideration under s 195A.

The Ombudsman notes the department's advice that ministerial submissions under ss 501 and 195A were subsequently placed on hold pending an investigation of Mr X's case in light of the FC judgment of 3 May 2017. The department also advised that, depending on the outcome of that investigation, the ministerial submission under s 195A may be held further while the Minister considers Mr X's case under s 501.

The Ombudsman notes that Mr X reportedly continued to display abusive, aggressive and threatening behaviour and has allegedly been involved in numerous behavioural incidents during this assessment period. He also has a serious criminal record.

The Ombudsman notes with concern that Mr X requires treatment for complex mental health concerns, including narcissistic personality disorder and neurocognitive issues. He also self-harmed and threatened self-harm during this assessment period.

It remains the Ombudsman's view that there is a risk that the longer Mr X is held in an immigration detention facility, the greater the likelihood that an alternative placement or other arrangement will not be successful.

In light of these concerns, the Ombudsman recommends that the investigation of Mr X's case in light of the FC judgment be expedited so that the consideration of his case under ss 501 and 195A can resume.