

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	Stateless, born in Country A
Year of birth	1986
Ombudsman ID	1002536-O
Date of DIBP's reviews	23 October 2016 and 24 April 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

30 October 2013	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.
9 September 2014	Transferred to Facility C.
10 September 2014	Transferred to Facility D.
8 January 2015	Transferred to a correctional facility. ¹
1 December 2016	Transferred to Facility E.

Visa applications/case progression

The Department of Immigration and Border Protection (the department) advised that Mr X arrived in Australia as a dependent on his mother's Partner visa on 18 May 2005. On 28 January 2009 Mr X withdrew as a dependant on his mother's Partner visa and was granted an associated bridging visa valid until 25 February 2009.	
3 March 2009	Lodged Protection visa application.
19 March 2009	Granted a bridging visa valid until 14 October 2010.
2 June 2009	Protection visa application refused.
25 June 2009	Applied to the Refugee Review Tribunal (RRT) for merits review. On 15 November 2010 the RRT affirmed the original decision.
17 November 2010	Found not to meet the guidelines for ministerial intervention under s 417.
15 March 2011 – 5 July 2016	Mr X requested ministerial intervention under s 417 on three occasions and the department initiated two requests for ministerial intervention under s 48B. All requests were found not to meet the guidelines for referral or were not considered by the Minister.
29 June 2013	Lodged a Carer visa application. On 2 July 2013 the application was found to be invalid.

¹ Mr X was held in immigration detention at a correctional facility under s 5 as he was considered to be a risk to detention centre staff and other detainees.

3 July 2013	Mr X's case was affected by the judgment of the Full Federal Court ² which found that s 48A does not prevent a person from lodging a further Protection visa application on complementary protection grounds where the first application was made and refused before 24 March 2012.
22 August 2013	Lodged a further Protection visa application with an associated bridging visa application. His associated bridging visa was refused under s 501 and on 1 November 2013 he applied to the Migration Review Tribunal (MRT) for merits review.
30 October 2013	Granted a bridging visa which was cancelled under s 116 on the same day. He subsequently applied to the MRT for merits review and on 11 November 2013 the MRT set aside the department's decision, however the bridging visa had ceased.
7 November 2013	Lodged a bridging visa application which was found to be invalid on the same day.
28 November 2013	The MRT found it had no jurisdiction to review the cancellation of Mr X's bridging visa under s 501.
12 March 2014	The department notified Mr X of the unintentional release of personal information. ³ On 2 February 2015 Mr X provided a response.
8 May 2014	Protection visa application refused.
9 May 2014	Applied to the Refugee Review Tribunal (RRT) for merits review. On 16 September 2014 the RRT affirmed the original decision.
22 September 2014	Applied to the Federal Circuit Court (FCC) for judicial review. On 4 March 2016 the FCC affirmed the decision of the RRT.
24 December 2014	Mr X was issued with a Criminal Justice Stay Certificate (CJSC). On 3 September 2015 his CJSC was cancelled.
7 January 2015	The department declined to consider granting Mr X a Criminal Justice Stay visa.
23 October 2016	The department advised that Mr X was considered a person of interest to the department in relation to his significant history of behavioural incidents in immigration detention.
20 March 2017	Requested voluntary removal.
24 April 2017	The department advised that as Mr X has no matters before the department, the courts or tribunals, he is on a removal pathway. The department further advised that it was working with Mr X to facilitate his removal.

² *SZGIZ v Minister for Immigration and Citizenship* [2013] FCAFC 71.

³ In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

Criminal history

<p>The department advised that Mr X has an extensive criminal history and was charged with multiple offences between 2007 and 2010, including family violence offences, theft, weapons offences, assault, deceiving police and drug production.</p>	
June 2009	Mr X received a 28 month suspended sentence for failing to comply with a Domestic Violence Restraining Order.
November 2010	Mr X was sentenced to 48 months imprisonment with a non-parole period of 24 months for domestic violence and property damage offences.
January 2015	Mr X was sentenced to 12 months imprisonment with a non-parole period of six months for multiple offences after he assaulted a Serco officer at Facility D.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of complex mental health and behavioural concerns, including temper and aggression issues, depression and a severe personality disorder with antisocial and narcissistic traits. Mr X was placed on Supportive Monitoring and Engagement observations on multiple occasions and a psychiatrist recommended that he be placed in a high security compound. He also reported a history of childhood epileptic seizures and was referred for an electroencephalogram, however IHMS advised that he was often non-compliant with medication as a form of protest. Following his transfer to Facility E Mr X attended specialist counselling for the management of a history of torture and trauma and was regularly reviewed by a psychologist.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health concerns, including a nose fracture, joint and back pain, hand numbness and lung concerns. He underwent investigative testing and was awaiting an appointment with an ear nose and throat specialist.</p>	
21 August 2014 – 18 January 2017	Incident Reports recorded that Mr X refused food and fluid, threatened self-harm and self-harmed on multiple occasions.
8 January 2016 – 1 December 2016	IHMS advised that it was unable to monitor Mr X's condition while he was detained in a correctional facility.

Detention incidents

<p>Incident Reports recorded that Mr X had allegedly been involved in an extensive number of significant behavioural incidents, including displaying abusive and aggressive behaviour and assaulting detention centre staff and other detainees.</p>	
August 2014	An Incident Report recorded that Mr X allegedly held a member of detention centre staff against their will.
December 2016	Mr X allegedly assaulted another detainee with a weapon. The matter was referred to the police for investigation, but they declined to investigate.
February 2017	Mr X allegedly sexually assaulted another detainee. The matter was referred to the police and on 27 February 2017 the investigation was finalised as there was insufficient evidence.

Other matters

6 January 2016	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to a number of concerns relating to his detention at a correctional facility, including a lack of access to medical treatment and breaches of his privacy. The matter remained ongoing.
23 February 2016	The department was notified that Mr X lodged a complaint with the Australian Human Rights Commission relating to a number of issues including his immigration detention, separation from his family and privacy. The department provided a response on 27 April 2016 and 18 April 2017. The matter remained ongoing at the time of the department's latest review.
The department advised that Mr X's mother, siblings and daughter are Australian citizens.	

Ombudsman assessment

<p>Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in an immigration detention facility for more than two and a half years. He has no matters before the department, the courts or tribunals and is on a removal pathway.</p> <p>On 20 March 2017 Mr X requested voluntary removal and the department advised that it was working with Mr X to facilitate his removal.</p> <p>The Ombudsman notes with concern the advice of IHMS that it was unable to monitor Mr X's condition while he was detained in a correctional facility. The Ombudsman notes with concern that in the absence of any health and welfare information provided by the department the Ombudsman is unable to assess the adequacy of health care provided to Mr X during his detention at a correctional facility.</p> <p>The Ombudsman makes no recommendation in this assessment.</p>
