

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 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1983
Ombudsman ID	1002772-O
Date of department's report	28 September 2017 ¹
Total days in detention	905 (at date of department's report)

Detention history

22 October 2004	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.
28 January 2005	Granted a bridging visa and released from immigration detention.
9 August 2005	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Facility B.
25 October 2005	Granted a bridging visa and released from immigration detention.
29 September 2015	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Facility B.

Visa applications/case progression

Mr X arrived in Australia with his family on 21 April 1985 on a three-week visitor visa. On 18 May 1985 the family was granted a long stay visitor visa. The family overstayed their visa and resided unlawfully in the community for five years.	
21 June 1990	Mr X included as a dependant on a Refugee status application.
27 June 1994	Refugee status application refused.
1 September 1994 – 21 October 2004	Granted the first of multiple bridging visas, the last of which ceased on 21 October 2004.
25 January 1995	The Refugee Review Tribunal affirmed the decision to refuse Mr X's Refugee status application.
15 March 1996	Family (Residence) visa application lodged with Mr X included as a dependant.
20 December 1999	Family (Residence) visa application refused.
9 January 2002	Migration Review Tribunal (MRT) affirmed the decision to refuse Mr X's Family (Residence) visa application.

¹ The department advised that as departmental systems did not show Mr X's earlier periods of immigration detention, Mr X's days in detention exceeded those required for the 24-month statutory reporting period under s 486N. The department consequently provided a combined 24 and 30-month report on 28 September 2017.

10 September 2002	The Federal Court (FC) dismissed Mr X's application for judicial review.
26 February 2003	The Full Federal Court remitted Mr X's case to the MRT for reconsideration.
21 November 2003	The MRT affirmed the original decision.
26 October 2004 – 13 January 2005	Lodged multiple bridging visa applications that were refused.
1 November 2004	Lodged a Close Ties visa application.
25 January 2005	The MRT remitted the refusal of Mr X's bridging visa application for reconsideration.
28 January 2005	Granted a bridging visa that ceased on 22 June 2005.
20 May 2005	Close Ties visa application refused under s 501.
2 August 2005	Granted a pending departure bridging visa.
9 August 2005	Mr X was notified of the refusal of his Close Ties visa application. Issued with a Notice of Intention to Consider Cancellation (NOICC) of his bridging visa and his visa was cancelled on the same day under s 116.
24 October 2005	The Administrative Appeals Tribunal (AAT) remitted the decision to refuse Mr X's Close Ties visa application to the Department of Home Affairs (the department) for reconsideration. The AAT set aside the cancellation of Mr X's bridging visa and he was granted a bridging visa on 25 October 2005.
2 July 2012	Issued with a NOICC of his bridging visa.
24 September 2012	The Minister declined to cancel Mr X's bridging visa under s 501 and instead issued him with a warning letter advising that further criminal convictions could result in the cancellation of his visa.
27 March 2013	Close Ties visa granted.
16 September 2015	Close Ties visa mandatorily cancelled under s 501. Bridging visa cancelled under operation of law.
9 October 2015	Mr X lodged a Request for Revocation of Cancellation of his Close Ties visa. On 3 May 2017 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa under s 501.
16 March 2017	The department finalised an International Treaties Obligations Assessment, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
25 May 2017	Applied to the FC for judicial review of the non-revocation decision. The matter was adjourned and judgment reserved on 29 August 2017.

Criminal history

The department advised that Mr X has had numerous convictions and prison sentences for offences including shoplifting, robbery and assault.	
May 2002	Convicted of shoplifting and larceny and sentenced to one year imprisonment.

July 2006	Convicted of assault with intent to rob and sentenced to six years and eight months imprisonment.
August 2011	Sentenced to nine months imprisonment for an additional theft offence.
May 2015	Sentenced to three months and seven months imprisonment respectively for two theft-related offences.
June 2015	Sentenced to nine months imprisonment for assault.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple physical health concerns, including chest, abdominal, dental and knee pain, a substance addiction and injuries following an alleged assault.</p> <p>In June 2017 Mr X was allegedly assaulted by another detainee. He was transferred to a hospital where he was treated and it was noted that he required further specialist review. He was subsequently reviewed multiple times in June and July 2017 and Mr X reported that he continued to experience related concerns. He continued to be monitored by IHMS and medical specialists.</p>	
June 2017	An Incident Report and IHMS recorded that Mr X was transported to hospital by ambulance.

Other matters

Mr X’s parents, brother, partner and daughter reside in Australia. His partner and daughter are Australian citizens.
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Case status

<p>Mr X was first detained on 22 October 2004 following his release from a correction facility and was later granted a bridging visa. He was re-detained on 9 August 2005 after remaining unlawfully in the community and was later granted another bridging visa. He was again re-detained on 29 September 2015 following his release from a correctional facility. He has remained in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>Mr X’s Close Ties visa was mandatorily cancelled under s 501 on 16 September 2015. On 25 May 2017 he applied to the FC for judicial review.</p> <p>At the time of the department’s report Mr X was awaiting the outcome of judicial review.</p>
