

## 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 24 months (two years).

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| <b>Name</b>                        | Mr X                                 |
| <b>Citizenship</b>                 | Country A                            |
| <b>Year of birth</b>               | 1964                                 |
| <b>Ombudsman ID</b>                | 1002797-O                            |
| <b>Date of department's report</b> | 8 November 2017                      |
| <b>Total days in detention</b>     | 730 (at date of department's report) |

### Detention history

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| 9 November 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 C. |
| 16 February 2016  | Transferred to Facility D.   |
| 21 September 2016 | Transferred to Facility E.   |
| 12 July 2017      | Transferred to Facility D.   |

### Visa applications/case progression

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| Mr X arrived in Australia with his family on 27 April 1968 on a permanent entry permit. Following legislative amendment on 1 September 1994, Mr X held a Transitional (Permanent) visa. |   |
| 18 July 2007 and 20 August 2014   | Mr X's case was assessed under s 501 following criminal convictions. The Department of Home Affairs (the department) declined to cancel his Transitional (Permanent) visa and instead issued him with a warning letter advising that further criminal convictions could result in the cancellation of his visa. |
| 7 August 2015   | Transitional (Permanent) visa mandatorily cancelled under s 501 following further criminal convictions.   |
| 4 September 2015  | Mr X lodged a Request for Revocation of Cancellation. On 7 November 2016 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa under s 501.   |
| 15 January 2017   | Requested ministerial intervention under s 351 for the Minister to substitute a more favourable decision. The department advised that no action was taken on this request as the Minister is only able to intervene under s 351 when a tribunal has made a decision under s 349.                                |
| 31 May 2017   | The Federal Court dismissed Mr X's application for judicial review of the Assistant Minister's decision.  |
| 21 June 2017  | Mr X lodged a complaint with the United Nations High Commissioner for Refugees (UNHCR) and on 23 June 2017 the UNHCR issued an Interim Measures Request (IMR) requesting that Mr X not be removed from Australia until it considers his complaint.  |

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| 8 November 2017 | <p>The department advised that Mr X's removal from Australia was suspended pending the Minister's consideration of the IMR.</p> <p>The department further advised that the authorities of Country B had confirmed that Mr X has the right to Country B citizenship.</p> |
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**Criminal history**

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| <p>The department advised that Mr X has an extensive criminal history in Australia, including traffic, theft, violence and drug offences.</p> |  |
| March 2015  | <p>Convicted of three domestic violence related offences and sentenced to four months imprisonment for each offence.</p> |

**Health and welfare**

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| <p>International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple physical health concerns, including chest pain, gastric issues and osteoarthritis. In January 2016 he was admitted to hospital after presenting with chest pain and anxiety related to a pending transfer to another immigration detention facility. In April 2017 he was admitted to hospital after presenting with medical condition and in May 2017 he underwent a medical procedure. His condition continued to be monitored by a general practitioner (GP) and he was awaiting an appointment with an orthopaedic specialist at the time of IHMS's report.</p> <p>IHMS further advised that Mr X received treatment for an adjustment disorder with depressed mood related to his immigration detention. In April 2016 a psychiatrist noted that Mr X has a history of polysubstance abuse disorder and in May 2017 his prescribed medication was adjusted. He continued to engage with the mental health team and was monitored by a GP and psychiatrist.</p> |  |
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**Other matters**

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| <p>Mr X's wife and sons are Australian citizens and reside in State F.</p> |
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**Case status**

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| <p>Mr X was detained on 9 November 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than two years.</p> <p>Mr X's Transitional (Permanent) visa was mandatorily cancelled under s 501 on 7 August 2015 and on 7 November 2016 the Assistant Minister decided not to revoke the cancellation of his visa.</p> <p>On 21 June 2017 Mr X lodged a complaint with the UNHCR and on 23 June 2017 the UNHCR issued an IMR requesting that Mr X not be removed from Australia until it considers his complaint.</p> <p>On 8 November 2017 the department advised that Mr X's removal from Australia was suspended pending the Minister's consideration of the IMR.</p> |
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