

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1981
<b>Ombudsman ID</b>	1002595-O
<b>Date of DIBP's reports</b>	6 February 2017 and 6 August 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

6 February 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.
12 June 2015	Transferred to Facility D.
4 December 2015	Transferred to Facility E.

### Visa applications/case progression

Mr X arrived in Australia on 8 September 1995 as a dependent on his mother's Refugee and Humanitarian visa. The Department of Immigration and Border Protection (the department) advised that Mr X subsequently held a transitional permanent visa following legislative amendment.	
13 November 2009	Issued with a Notice of Intention to Consider Cancellation (NOICC) of his permanent visa following criminal charges. Mr X provided a response on 28 January 2010.
10 October 2012	An International Treaties Obligations Assessment (ITOA) found that Mr X was owed <i>non-refoulement</i> obligations under ss 36(2)(aa) and 36(2C).
28 October 2012	Issued with a second NOICC of his permanent visa, however the process was suspended following further criminal charges.
19 December 2014	Permanent visa cancelled under s 501.
12 January 2015	Mr X lodged a request for revocation of the decision to cancel his permanent visa under s 501. On 22 July 2016 the Minister declined to revoke the original decision.
28 July 2016	Requested voluntary removal from Australia. On 15 August 2016 Mr X withdrew his request.
25 August 2016	Applied to the Federal Circuit Court (FCC) for judicial review of the decision to cancel his visa under s 501.
7 October 2016	The FCC ordered that the matter be transferred to the Federal Court (FC) for determination.

21 July 2017	FC set aside the Minister's decision not to revoke the cancellation of Mr X's visa under s 501 and ordered that the matter be determined according to law.
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### Criminal history

Mr X has a significant criminal history, including convictions for trafficking prohibited drugs and threatening to kill. In 2003 he was sentenced to four and a half years imprisonment for intentionally causing serious injury and in 2004 he was convicted of rape and sentenced to eight years imprisonment with a non-parole period of six years. In 2011 he was sentenced to four and a half years and two and a half years imprisonment respectively with a non-parole period of three years and six months for armed robbery and attempted robbery.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has a history of torture and trauma, suicide attempts, post-traumatic stress disorder, depression and drug abuse. Mr X was reviewed by an addiction specialist and provided with methadone treatment. He also attended supportive counselling and was prescribed with medication for insomnia on 10 September 2016.

On 16 January 2017 Mr X was admitted to hospital and placed on Supportive Monitoring and Engagement observations after threatening self-harm and expressing safety concerns related to other detainees. On 18 January 2017 a psychiatrist reported that Mr X was experiencing a situational crisis and recommended that he receive ongoing protection by Serco officers due to safety concerns. In March 2017 Mr X reported that he had self-harmed to ensure he would be closely monitored by Serco officers as this made him feel safer. IHMS advised that his security needs continue to be provided by Serco and he was regularly reviewed by the mental health team.

On 28 March 2017 Mr X was admitted to hospital after sustaining a broken nose and finger during an alleged assault. He was referred to an ear, nose and throat specialist and hand clinic for further treatment.

IHMS further advised that Mr X was provided with treatment for multiple physical health concerns, including a hand injury, hepatitis C, hypertension and a perforated ear drum.

20 May 2016	An Incident Report recorded that Mr X threatened self-harm.
31 December 2016 – 29 March 2017	Incident Reports recorded that Mr X threatened to self-harm in relation to personal security concerns on four occasions.
13 January 2017	An Incident Report recorded that Mr X threatened self-harm during an IHMS mental health assessment.

### Detention incidents

19 February 2017	An Incident Report recorded that Mr X reported to a Serco officer that he had been threatened and intimidated by another detainee.
March 2017	An Incident Report recorded that Mr X was admitted to hospital after he was continuously punched in the face and head by another detainee. The alleged perpetrator was taken into police custody in April 2017.
29 March 2017	An Incident Report recorded that a detainee threatened to assault Mr X due to his criminal history.
14 April 2017	An Incident Report recorded that Mr X was transferred to an alternative dormitory for his own safety and wellbeing.

## Other matters

Mr X's mother is an Australian citizen and resides in City G. Mr X has four siblings, three are Australian citizens and one is an Australian permanent resident.

Mr X also has an aunt, three nieces and two nephews who reside in Australia.

## Information provided by Mr X

During an interview with Ombudsman staff at Facility E in September 2017 Mr X advised that he is very concerned about his safety in detention. He reported that he was previously placed in large dormitories where he was targeted and assaulted by other detainees because of the nature of his criminal history. He said that detention centre staff wanted him to testify against those who had assaulted him, but he refused to testify unless his safety was guaranteed. He said that he ultimately did not have to testify as the perpetrator accepted a plea bargain and that he had recently been placed in a different dormitory where he only shares with one other detainee.

Mr X advised that he spent time in a refugee camp in Country B before coming to Australia and this was a traumatic experience. He said he struggled when he first arrived in Australia and was placed in a foster home because his mother could not cope. He said he was isolated because he could not speak English and felt as though he had been forgotten by everyone. He stated that he subsequently became involved with other kids who introduced him to drugs and spent time in juvenile detention.

Mr X reported that he was surprised when his Protection visa was cancelled because he thought he was a citizen as his mother had become a citizen when he was 16 years old. He said that his mother and sisters reside in City G and he has a good relationship with them. He advised that both he and his lawyer have made requests for him to be transferred back to City H so his family would be better able to visit.

Mr X said that he has high blood pressure and was about to commence hepatitis C treatment. He advised that his finger is still damaged from an assault and he is seeing a hand specialist. He also said that he finds the mental health nurses helpful and that he used to attend torture and trauma counselling and would like to recommence this.

## Ombudsman assessment/recommendation

Mr X was detained on 6 February 2015 following his release from a correctional facility and has been held in an immigration detention facility for more than two and a half years.

On 10 October 2012 an ITOA found that Australia owed Mr X *non-refoulement* obligations under ss 36(2)(aa) and 36(2C).

On 19 December 2014 Mr X's permanent visa was cancelled under s 501 and on 22 July 2016 the Minister declined to revoke this decision.

On 21 July 2017 the FC set aside the Minister's decision not to revoke the cancellation of Mr X's visa and ordered that the matter be determined according to law.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose. The Ombudsman notes with serious concern that Mr X threatened self-harm on multiple occasions in relation to concerns for his personal safety and self-harmed to ensure he would be closely monitored by Serco officers. The Ombudsman notes that a psychiatrist reported that Mr X was experiencing a situational crisis and recommended he receive ongoing protection by Serco officers due to these safety concerns.

The Ombudsman notes that multiple Incident Reports recorded that Mr X expressed concerns related to his personal safety and threats from other detainees. Notably, in March 2017 Mr X was admitted to hospital after he was continuously punched in the face and head by another detainee.

The Ombudsman further notes that Mr X's mother and sisters reside in City G and were better able to visit him while he was detained in City H. The Ombudsman notes Mr X's advice that he has a good relationship with his family and has requested to be transferred to City H.

1. The Ombudsman recommends that consideration be given to transferring Mr X to Facility C to enable him to reside closer to his support network.
2. The Ombudsman further recommends that the department takes Mr X's personal safety into consideration when determining his accommodation placement.