

**ASSESSMENT BY THE COMMONWEALTH AND  
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

*Under s 486O of the Migration Act 1958*

This is the third s 486O assessment on Mr X who has remained in restricted immigration detention for more than 54 months (four and a half years).

The first assessment 1001745 was tabled in Parliament on 27 May 2015 and the second assessment 1003040 was tabled in Parliament on 31 August 2016. 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>	1985
<b>Ombudsman ID</b>	1001058-O
<b>Date of DIBP's reviews</b>	13 July 2016 and 11 January 2017
<b>Total days in detention</b>	1,640 (at date of DIBP's latest review)

**Recent detention history**

Since the Ombudsman's previous assessment (1003040), Mr X remained at Wickham Point Alternative Place of Detention.	
16 June 2016	Transferred to Yongah Hill Immigration Detention Centre.

**Recent visa applications/case progression**

13 April 2016	The Minister lifted the bars under ss 46A and 48B of the <i>Migration Act 1958</i> to allow Mr X to lodge a temporary visa application.
18 May 2016	Found to meet the guidelines for referral to the Minister under s 195A for the grant of a Bridging visa.
27 July 2016	The Minister appealed the judgment handed down on 2 September 2015 by the Full Federal Court <sup>1</sup> and the High Court found that the International Treaties Obligations Assessment process was not procedurally unfair. <sup>2</sup>
2 September 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He accepted the offer on 5 September 2016 and was assigned a provider.
9 September 2016	The Minister declined to intervene under s 195A.
21 December 2016	Lodged a Safe Haven Enterprise visa (SHEV) application.

<sup>1</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

<sup>2</sup> *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

11 January 2017	<p>The Department of Immigration and Border Protection (the department) advised that Mr X's case is being reassessed against the guidelines under s 195A.</p> <p>The department further advised that the Federal Circuit Court review of the Refugee Review Tribunal's decision remains adjourned with judgment reserved.</p>
-----------------	---

**Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X previously attended regular counselling sessions with an IHMS mental health nurse. He was also prescribed with medication for the symptoms of insomnia, detention fatigue, and low mood which was later ceased following side effects. He experienced ongoing frustration associated with his ongoing detention and concerns about his family. He reported that counselling was beneficial for his mental health. IHMS stated that it continued to provide mental health support as required.

IHMS further advised that Mr X has received treatment for lower back pain and a pigmentation condition.

**Other matters**

2 June 2016	<p>The Australian Human Rights Commission notified the department of a complaint lodged by Mr X. On 27 June 2016 the department provided a response.</p>
-------------	--

**Information provided by Mr X**

During a telephone conversation with Ombudsman staff on 9 June 2017 Mr X advised that his mental health is affected by remaining in restricted detention. He said that he feels depressed and is stressed about his children in Country A that he no longer has contact with as his wife has separated from him. He further advised that he finds it hard to be motivated to engage in programs or activities, aside from providing haircuts, which he was skilled in. He stated that he frequently has severe headaches associated with stress and has to take pain relief medication.

He contacts his mother and extended family about once a week. He further advised that he has been transferred between facilities numerous times with little explanation. He stated that he does not understand why he remains in restricted detention while other detainees are in the community.

**Ombudsman assessment/recommendation**

Mr X has previously been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in restricted detention for more than four and a half years.

On 13 April 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 21 December 2016 Mr X lodged an application for a SHEV.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to physical and mental health prolonged restricted immigration detention may pose.

The Ombudsman notes that Mr X advised that he has ongoing mental health concerns relating to his detention circumstances.

In light of the significant length of time Mr X has remained in detention and the absence of any behavioural or security concerns, the Ombudsman recommends that Mr X's case be referred to the Minister for consideration under s 197AB for a community detention placement and s 195A for the grant of a Bridging visa.