

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 42 months (three and a half years).

The first assessment 1002235-O was tabled in Parliament on 20 October 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1002235-O1
Date of DIBP's reviews	21 November 2016 and 22 May 2017
Total days in detention	1,278 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002235-O), Mr X remained at Wickham Point Alternative Place of Detention.	
21 June 2016	Transferred to Yongah Hill Immigration Detention Centre (IDC).

Recent visa applications/case progression

8 June 2016	The Minister lifted the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X to lodge a temporary visa application. ¹
15 May 2016	Mr X requested access to documents under the <i>Freedom of Information Act 1982</i> . On 18 June 2016 the Department of Immigration and Border Protection (the department) finalised the request and released 14 documents found to be within the scope of Mr X's request.
18 November 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.
29 December 2016	Lodged a Safe Haven Enterprise visa (SHEV) application.
30 March 2017	Mr X's SHEV application was found to be invalid as the required visa application charge was not made with the application.
11 April 2017	Mr X's representative notified the department of Mr X's intention to withdraw his SHEV application, with a view to lodging a new application.
12 May 2017	The Minister indicated that he was not inclined to consider Mr X's case under s 195A for the grant of a bridging visa.

¹ On 21 November 2016 the department advised that its previous review, dated 21 May 2016, incorrectly advised that the Minister lifted the bars under ss 46A and 48B. The department advised that Mr X was subject to the s 46A bar, not to the s 48B bar.

Health and welfare

International Health and Medical Services advised that Mr X disclosed a history of torture and trauma in November 2016 but declined a referral for specialist counselling.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 25 May 2017 Mr X advised that his lawyer was currently preparing a new SHEV application and he had not spoken with his case manager in five months.

Mr X said that he was very concerned about his future. He said he has no life in detention and sometimes stays alone in his room. He said he felt as though he was in prison even though he has done nothing wrong and does not understand why he has not been granted a bridging visa.

Mr X advised that he has seen the mental health team, but they are unable to help him as his main concerns are his immigration status and detention.

Mr X reported that his wife and two daughters are in Country B and he usually speaks with them every couple of months.

Ombudsman assessment/recommendation

Mr X was detained on 7 June 2011 after arriving in Australia by sea and has been held in an immigration detention facility for a cumulative period of more than three and a half years.

On 29 December 2016 Mr X lodged a SHEV application and on 30 March 2017 his SHEV application was found to be invalid. On 11 April 2017 Mr X's representative indicated that Mr X wished to withdraw his existing SHEV application, with a view to lodging a new application.

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. In light of the significant length of time Mr X has remained in an immigration detention facility and the absence of any recent behavioural concerns, the Ombudsman recommends that Mr X's case be considered under s 195A for the grant of a bridging visa.