

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1982
<b>Ombudsman ID</b>	1002515-O
<b>Date of DIBP's reviews</b>	1 October 2016 and 3 April 2017
<b>Total days in detention</b>	914 (at date of DIBP's latest review)

### Detention history

16 September 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
16 October 2012	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
1 November 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point Immigration Detention Centre (IDC).
9 January 2015	Transferred to Wickham Point APOD.
16 June 2016	Transferred to Yongah Hill IDC.

### Visa applications/case progression

Mr X arrived in Australia by sea between 13 August 2012 and 19 July 2013. He was transferred to an RPC and subsequently returned to immigration detention in Australia. Prior to being classified as a 'fast track' applicant, Mr X was part of a cohort who were unable to have their protection claims assessed as they were subject to bars under ss 46A and 46B.	
18 April 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
20 April 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a bridging visa.
23 May 2016	The Minister declined to intervene under s 195A to grant Mr X a bridging visa.
21 April 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 22 April 2016.
9 May 2016	Lodged a Safe Haven Enterprise Visa (SHEV) application.
26 September 2016	SHEV application refused.

<sup>1</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

4 October 2016	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
16 November 2016	The IAA remitted Mr X's case to the Department of Immigration and Border Protection (the department) for reconsideration with the direction that there are substantial grounds for believing that, as a necessary and foreseeable consequence of Mr X being removed from Australia, there is a real risk that he will suffer significant harm.
13 December 2016 and 22 March 2017	The department requested Mr X provide additional information in relation to his SHEV application.
16 December 2016	The Minister declined to intervene under s 195A to grant Mr X a bridging visa.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling and engaged with the mental health team for the management of a history of torture and trauma. He was reviewed by a psychiatrist after reporting suicidal ideation and ongoing stress associated with his detention circumstances. He engaged in both individual and group therapy sessions to assist with coping with frustration regarding his immigration status. Following an incident of self-harm in January 2015, Mr X advised that he was frustrated about concerns of not being able to support his family who reside overseas. He was placed on Supportive Monitoring and Engagement observations.</p> <p>IHMS further advised that Mr X has received treatment for knee concerns and indigestion.</p>	
22 January 2015	An Incident Report recorded that Mr X self-harmed.
21 January 2016	An Incident Report recorded that Mr X threatened self-harm.

### Information provided by Mr X

<p>During an interview with Ombudsman staff at Yongah Hill IDC on 25 May 2017 Mr X advised that he did not understand why he was still in detention after the IAA had remitted his case back to the department in November 2016. He stated that when he first received advice from the IAA his case manager told him that he would be released within a few weeks.</p> <p>He further advised that he felt like some Serco officers harassed him, and that he was made to feel like a criminal while in detention. He also stated that as a vegetarian, he did not think that there were enough food options at Yongah Hill IDC.</p> <p>He felt like he was suffering in detention and stated that he was worried about his parents and his young children who he could no longer support while he remained in detention.</p>	
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**Ombudsman assessment/recommendation**

Mr X was detained on 16 September 2012 after arriving in Australia by sea and has been held in an immigration detention facility for more than two and a half years.

On 18 April 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 9 May 2016 Mr X lodged an application for a SHEV.

Mr X's SHEV application was refused on 26 September 2016. The IAA reviewed the decision and on 16 November 2016 the application was remitted to the department with the direction that there are substantial grounds for believing that, as a necessary and foreseeable consequence of Mr X being removed from Australia, there is a real risk that he will suffer significant harm.

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 detention and the absence of any recent behavioural or security concerns, as well as his ongoing mental health concerns, the Ombudsman recommends that Mr X be considered under s 195A for the grant of a bridging visa.