

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 more than 42 months (three and a half years).

The first assessment 1003375 was tabled in Parliament on 31 August 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	1972
Ombudsman ID	1002115-O
Date of DIBP's reviews	22 August 2016 and 20 February 2017
Total days in detention	1,276 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1003375), Mr X remained at Perth Immigration Detention Centre (IDC).	
24 April 2017	The Department of Immigration and Border Protection (the department) advised that Mr X had been transferred to Yongah Hill IDC.

Recent visa applications/case progression

18 February 2016	Mr X was reassessed for eligibility to receive the Primary Application Information Service and was found to be ineligible.
31 August 2016	Safe Haven Enterprise visa (SHEV) application refused under s 36(2C)(b) of the <i>Migration Act 1958</i> as a result of criminal charges. The department advised that Mr X is not entitled to merits review of this decision.
21 September 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a bridging visa.
5 October 2016	Applied to the Federal Circuit Court for judicial review.
13 October 2016	The Minister declined to intervene under s 195A.
20 February 2017	The department advised that Mr X remains a person of interest as a result of the Five Country Conference ¹ fingerprint check results.

¹ In 2009 the Five Country Conference data sharing arrangement was implemented whereby biometric data, including fingerprints, may be shared between Australia, United Kingdom, United States of America, Canada and New Zealand.

Health and welfare

International Health and Medical Services (IHMS) advised that during a mental health review in October 2016 Mr X reported ongoing low mood and stress associated with his immigration status and separation from his family. A mental health nurse noted that detention fatigue was evident and that Mr X's mental state was likely to deteriorate if he remained in an immigration detention facility.

IHMS further advised that Mr X received treatment for a number of minor physical health concerns. He was referred for physiotherapy for recurring neck and shoulder pain and was reviewed by an optometrist for vision deterioration and concerns regarding a suspected glaucoma. Mr X was provided with advice in relation to the seriousness and long term consequences of his vision concerns but declined to attend follow-up appointments.

Other matters

9 December 2015	<p>The department received a request for further information regarding a complaint lodged in November 2014 by Mr X with the Australian Human Rights Commission (AHRC) regarding the sexual assault of his daughter in immigration detention. The department provided a response to the ARHC on 3 May 2016.</p> <p>The AHRC recommended that the department promptly make a submission to the Minister for his consideration under s 195A to grant Mr X a bridging visa.</p>
16 September 2016	<p>The department provided a response to the findings and recommendations of the AHRC and advised that Mr X would be referred to the Minister for his consideration under s 195A.</p>
<p>Mr X's wife, Ms Y and his two children, Master Z and Miss P are listed as dependants on Mr X's SHEV application. They currently reside in the community on bridging visas.</p>	

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 24 May 2017 Mr X advised that he had come to Australia with his wife and two young children. When they arrived they were detained at Christmas Island for seven months and during this period his daughter was sexually assaulted. In July 2014 his family was released from detention on bridging visas and he was transferred to Perth IDC. He stated that his time at Perth IDC was very difficult as there were no other people from Country A there for him to talk to and it was a very small centre. He requested to be transferred to a larger centre to benefit his mental health, and was subsequently transferred to Yongah Hill IDC. He stated that his life was much better at Yongah Hill IDC.

Mr X explained that he has a lot of difficulty staying in contact with his family who are based in Perth as his wife has to work from Tuesday to Sunday to support the family, and his children are at school, making it very hard for them to visit him. He stated that he is very worried about his relationship with his family. His children speak English more now, and he cannot speak English so it is becoming more difficult for him to communicate with them. When his children call they often ask him questions about their homework, but he can't really help them because he cannot talk to them for very long. He worries about his children and about how they are often home alone while his wife has to work. However he is very proud of how well they are doing at school.

Mr X further advised that he is worried about his vision, as he cannot see clearly anymore. He also stated that he feels depressed, but that there is no one to help him except for himself. He said that he has been in detention for a long time, and he believes his health is deteriorating.

Ombudsman assessment/recommendation

Mr X was detained on 24 August 2013 after arriving in Australia by sea and has been held in an immigration detention facility for over three and a half years.

At the time of the department's latest review Mr X was awaiting the outcome of judicial review.

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 that the continued separation of Mr X from his family is very stressful for him, and that a mental health nurse noted that Mr X's mental state was likely to deteriorate if he remained in an immigration detention facility.

In light of the significant length of time Mr X has remained in detention and his continued separation from his family, the Ombudsman recommends that Mr X be considered under s 195A for the grant of a bridging visa so that he can be reunited with his family.

The Ombudsman further recommends that if Mr X is not granted a bridging visa, that the department explore options to facilitate visits with his family, either by sourcing a service provider to accompany his children to visit him at Yongah Hill IDC while his wife is working, or transporting him to and from Perth IDC for scheduled visits with his family.