

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).

Name	Mr X
Citizenship	Country A
Year of birth	1977
Ombudsman ID	1002558-O
Date of DIBP's reports	22 December 2016 and 22 June 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

6 July 2013	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, Christmas Island.
10 July 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
24 July 2013	Transferred to Facility B.
21 August 2013	Granted a bridging visa with an associated Humanitarian Stay Temporary visa and released from detention.
7 February 2015	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Facility C.
13 March 2015	Transferred to Christmas Island IDC.
14 May 2015 – 9 October 2015	Transferred three times between Facility C and Christmas Island IDC.

Visa applications/case progression

9 December 2013	Mr X was remanded in criminal custody following criminal charges and his bridging visa was cancelled under s 116.
28 May 2015 and 21 July 2016	Found not to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
16 December 2015	Lodged a Safe Haven Enterprise visa (SHEV) application.
18 February 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a new temporary visa application or providing supporting information for his existing application. He accepted the offer on 23 February 2016 and was assigned a provider.
12 December 2016	Issued with a Notice of Intention to Consider Refusal (NOICR) of his SHEV application under s 501. Mr X's migration agent provided a response on 7 June 2017.

Criminal history

3 March 2014	Mr X was convicted of seven counts of indecent assault and sentenced to a combined term of four years and eight months imprisonment.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received specialist treatment for the management of chronic back, arm and neck pain. In May 2016 Mr X was admitted to hospital for treatment of severe neck pain and associated headaches. He attended physiotherapy and was prescribed with medication but continued to experience pain. In November 2016 he underwent a magnetic resonance imaging (MRI) scan which found symptoms of nerve compression. Mr X was reviewed by a rheumatologist in March 2017 and received steroid treatment for his back which provided temporary relief. At the time of IHMS's latest report, he was awaiting a review with a spinal specialist, orthopaedist, rheumatologist and neurosurgeon.</p> <p>IHMS further advised that Mr X disclosed a history of torture and trauma but declined to attend counselling. He presented with symptoms of anxiety and depression related to his chronic physical health concerns and was educated on relaxation techniques.</p>	
13 June 2015	An Incident Report recorded that Mr X refused food and fluid.
5 May 2016	An Incident Report recorded that Mr X was admitted to hospital for treatment of severe neck pain and associated headaches.

Information provided by Mr X

<p>During an interview with Ombudsman staff on 22 May 2017 Mr X stated that he was unsure about the status of his immigration case and believed that the department was conducting character checks. He stated that he rarely spoke with his case manager and felt that they were unhelpful as they did not provide him with much information. He advised that he was receiving legal assistance.</p> <p>Mr X advised that he had multiple physical health conditions but felt he had not received proper treatment and continues to experience pain. He stated that he had undergone an MRI scan for his chronic back, neck and shoulder pain, but that he had not received the results. He stated that he was recently prescribed with pain relief medication by a specialist but had experienced negative side effects, including disturbed sleep. He advised that three months ago he applied to obtain his IHMS medical records so that he could send them to an external doctor for a second opinion.</p> <p>Mr X stated that he was experiencing a lot of stress and pressure and sometimes had difficulty sleeping. He advised that his wife and children remain in his home country and he is always worrying about them. He contacts his family often but does not talk about his suffering as he did not wish to upset them.</p> <p>Mr X advised that he participated in a number of activities, including English class and painting, but could not participate in sporting activities because of his back problem. He stated that he could not read documents because of his limited English and relied on the assistance of friends.</p>
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Ombudsman assessment/recommendation

Mr X was detained on 6 July 2013 after arriving in Australia by sea and has been held in an immigration detention facility for more than two and a half years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa. On 16 December 2015 Mr X lodged an application for a SHEV and on 23 February 2016 Mr X was assigned a PAIS provider to assist him with lodging a new temporary visa application or providing supporting information for his existing application.

On 12 December 2016 Mr X was issued with a NOICR of his SHEV application under s 501 and on 7 June 2017 his migration agent provided a response.

The Ombudsman notes with concern advice from IHMS that Mr X received treatment and underwent investigative testing for chronic back, arm and neck pain. On 22 May 2017 Mr X advised that he had not received the test results and had applied to obtain his IHMS medical records so that he could send them to an external doctor for a second opinion.

The Ombudsman recommends that IHMS review Mr X's medical needs and provide him with his test results and medical records.