

## ASSESSMENT BY THE COMMONWEALTH 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 immigration detention for a cumulative period of more than 48 months (four years). The previous assessment 1002176-O was tabled in Parliament on 1 March 2017. 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>	1982
<b>Ombudsman ID</b>	1002176-O1
<b>Date of DIBP's reports</b>	31 March 2017 and 26 September 2017
<b>Total days in detention</b>	1,458 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, Mr X has remained at Yongah Hill Immigration Detention Centre.
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### Recent visa applications/case progression

7 October 2016	The Minister considered Mr X's case under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa and declined to intervene.
6 February 2017	Safe Haven Enterprise visa (SHEV) application refused. Mr X's case was subsequently referred to the Immigration Assessment Authority (IAA) for review.
23 March 2017	The IAA affirmed the decision to refuse his SHEV application.
31 March 2017	The Department of Immigration and Border Protection (the department) advised that Mr X was previously a person of interest to the department in relation to alleged offshore criminal matters.  The department further advised that Mr X had been identified for assessment against the guidelines under s 195A for possible referral to the Minister. The matter remained ongoing.
26 April 2017	Applied to the Federal Circuit Court (FCC) for judicial review.
27 July 2017	The FCC dismissed Mr X's application for judicial review and affirmed the decision to refuse his SHEV application.
11 August 2017	Applied to the Federal Court for judicial review. He attended a hearing on 29 August 2017 and the matter remained ongoing.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for ongoing gastroenterological concerns. In June and July 2017 he underwent an endoscopy and colonoscopy after reporting that he continued to experience symptoms. He was reviewed by a general practitioner (GP) who provided him with dietary advice to help manage his symptoms. His condition continued to be monitored by a GP.

IHMS further advised that Mr X previously attended counselling for a history of torture and trauma and continued to express frustration related to situational stress and his prolonged detention. In December 2016 he presented to the mental health team with rumination related to the uncertainty of his future and concerns about his family's wellbeing.

## Information provided by Mr X

During an interview with Ombudsman staff on 24 May 2017 Mr X advised that he had remained in immigration detention facilities for over four and a half years with no behavioural concerns.

Mr X advised that after being notified two months ago that his SHEV application had been rejected, he appealed to the FCC for judicial review. Mr X stated that he was previously assisted by a lawyer provided by the department and was now being assisted by a private lawyer who he trusts.

Mr X advised that he has only minor physical health concerns, but that his mental health was not good after being in an immigration detention facility for so long. He stated that he was feeling desperate and afraid because he did not know what would happen with his case in the future. Mr X advised that he had tried to get help from the IHMS mental health team, but found them unhelpful and dismissive of his concerns. He stated that he was trying his best to be resilient and accept his situation.

Mr X advised that he has many friends who live in Sydney and he speaks with his wife and daughter who remain in his home country every couple of days.

## 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 a cumulative period of more than four years.

Mr X's SHEV application was refused on 6 February 2017 and on 23 March 2017 the IAA affirmed the refusal.

At the time of the department's latest report 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.

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