

## 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 1003378 was tabled in Parliament on 14 September 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

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|--------------------------------|---|
| <b>Name</b>                    | Mr X                                    |
| <b>Citizenship</b>             | Stateless, born in Country A            |
| <b>Year of birth</b>           | 1997                                    |
| <b>Ombudsman ID</b>            | 1002118-O                               |
| <b>Date of DIBP's review</b>   | 23 August 2016 and 21 February 2017     |
| <b>Total days in detention</b> | 1,276 (at date of DIBP's latest review) |

### Recent detention history

|   |                            |
|---|----------------------------|
| Since the Ombudsman's previous assessment (1003378), Mr X remained at Facility B. |                            |
| 7 July 2015   | Transferred to Facility C. |

### Recent visa applications/case progression

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| 26 February 2016 | Mr X's protection claims were considered against new and updated information available to the Department of Immigration and Border Protection (the department) and it was determined that reassessment was warranted. |
| 31 March 2016    | Mr X's mother, Ms Y, <sup>1</sup> lodged a Safe Haven Enterprise visa (SHEV) application which listed him as a dependant.   |
| 20 June 2016     | SHEV application refused.   |
| 23 June 2016     | Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.  |
| 11 July 2016     | The IAA remitted Mr X's case to the department for reconsideration with the direction that he is a refugee within the meaning of s 5H of the <i>Migration Act 1958</i> .  |
| 23 August 2016   | The department advised that Mr X has been issued with a Qualified Security Assessment.  |
| 7 September 2016 | Mr X's SHEV application was referred for consideration under s 501.   |

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<sup>1</sup> Mr X's mother, Ms Y, was granted a SHEV on 2 December 2016 and is the subject of Ombudsman assessment 1002116-O.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continues to engage with the mental health team and attended specialist counselling for the management of depression, post-traumatic stress disorder, an adjustment disorder, behavioural concerns and a history of torture and trauma. Mr X has a significant history of learning and behavioural difficulties and was diagnosed in March 2015 with a mild intellectual impairment, conduct disorder and oppositional defiant disorder.

In March 2016 a psychiatrist noted that Mr X's intellectual disability is not of a nature that would mandate secure residential care in the community. In April 2016 he was referred to Disability Services Australia for the purposes of accessing a range of support services and at the time of the department's latest review was awaiting confirmation regarding his eligibility. In May 2016 Mr X was placed on Supportive Monitoring and Engagement observations following an incident of domestic violence with his mother.

Following neurological review in November 2016 it was recommended that Mr X be provided with the opportunity to continue pursuing education in any context and vocational hands-on employment as this would benefit him intellectually, socially and emotionally. In January 2017 a psychiatrist recommended that Mr X be reunited with his mother and brother for support and be placed in the community as his risk of misbehaviour is increased in an immigration detention facility environment.

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|-----------------|---|
| 18 May 2016     | An Incident Report recorded that Mr X stated that he was considering self-harm. |
| 23 June 2016    | An Incident Report recorded that Mr X threatened self-harm.                     |
| 3 November 2016 | An Incident Report recorded that Mr X reported self-harm ideation.              |

## Recent detention incidents

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| 1 February 2017 | An Incident Report recorded that Mr X threatened to harm a departmental officer. On 2 February 2017 the department referred the matter to the Australian Federal Police. |
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## Other matters

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|-------------|--|
| 23 May 2017 | A complaint was lodged on behalf of Mr X by his legal representative with the Office of the Commonwealth Ombudsman in relation to concerns regarding the investigation of three instances of alleged assault of Mr X at Facility C. At the time of reporting the complaint remained under investigation. |
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### Information provided by Mr X

During a telephone conversation with Ombudsman staff on 27 July 2017 Mr X advised that his mother and brother reside in the community, and used to visit him twice a week until his mother became quite unwell. He stated that he is very worried about his mother's health and that he doesn't know how long she may have. It makes him very upset and stressed to think that he can't spend any time with her because he remains in an immigration detention facility.

He stated that he feels like he has lost everything since he has been in immigration detention. He advised that he has multiple mental health concerns including attention deficit disorder, anger concerns, insomnia, bipolar disorder and depression. He stated that he saw a psychiatrist about five months ago but he did not find it very helpful. He stated that he does not feel like IHMS really listens to him and does not feel like the health services assist him with his concerns. Mr X further advised that the stress associated with his immigration status affects his ability to sleep and eat and he is worried as he has lost a lot of weight.

He explained that his community detention placement had been revoked in 2014 following his arrest. However, he stated that the mistakes he made that led to his arrest were the actions of a minor. He stated that he was just young, and not very mature, and his actions were affected by being in an immigration detention facility as well as his ongoing mental health concerns. He stated that he did not think it was fair for him to continue to be punished for the decisions he made as a minor. He stated that he would be much happier in the community, with his family, and that he would be able to better manage his mental health.

Mr X further advised that he wishes that he was able to study. He wants to be able to finish his high school certificate, and wants to be able to study at university. He advised that he has been told that he is too old for school, and that he isn't allowed to go on excursions, but being able to study would be very beneficial for his mental health, and would give him hope and direction.

### **Ombudsman assessment/recommendation**

Mr X was detained on 25 August 2013 after arriving in Australia by sea and has been held in detention for more than three and a half years.

On 31 March 2016 a SHEV application was lodged with Mr X listed as a dependant. Mr X's SHEV application was refused on 20 June 2016. The IAA reviewed the decision and on 11 July 2016 the application was remitted to the department with the direction that he is a refugee within the meaning of s 5H. On 7 September 2016 Mr X's SHEV application was referred for consideration under s 501.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose.

The Ombudsman notes that in January 2017 a psychiatrist recommended that Mr X be reunited with his mother and brother for support and be placed in the community as his risk of misbehaviour is increased in an immigration detention facility environment. In light of the significant length of time Mr X has remained in detention and his intellectual impairment and complex mental health conditions, the Ombudsman recommends that Mr X be considered under s 197AB for a community detention placement.

The Ombudsman further notes with concern that Mr X reports ongoing concern and worry associated with his mother's health. The Ombudsman recommends that if Mr X is not granted a community detention placement, that options for facilitated visits to his mother be explored.

Finally, the Ombudsman notes that following neurological review in November 2016 it was recommended that Mr X be provided with the opportunity to continue pursuing education in any context and vocational hands-on employment as this would benefit his mental health. Mr X has further advised that he wishes to be able to pursue education opportunities. The Ombudsman recommends that the department explore options for enabling Mr X to access adult education.