

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is third s 486O assessment on Mr X who has remained in restricted immigration detention for a cumulative period of more than 48 months (four years).

The first assessment 1002349 was tabled in Parliament on 9 September 2015 and the second assessment 1003262 was tabled in Parliament on 23 November 2016. 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>	1990
<b>Ombudsman ID</b>	1001280-O
<b>Date of DIBP's review</b>	13 February 2017
<b>Total days in detention</b>	1,460 (at date of DIBP's review)

### Recent detention history

Since the Ombudsman's previous assessment (1003262), Mr X has remained at Facility B.

### Recent visa applications/case progression

7 September 2016	Safe Haven Enterprise visa (SHEV) application refused.
8 September 2016	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
29 November 2016	The IAA affirmed the decision to refuse Mr X's SHEV application.
1 January 2017	Applied to the Federal Circuit Court for judicial review. Mr X was scheduled to attend a hearing on 15 March 2017.
2 February 2017	Mr X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a Bridging visa.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X did not receive treatment for any major physical or mental health issues since its previous report to the Ombudsman.

**Information provided by Mr X**

During a telephone conversation with Ombudsman staff on 21 June 2017 Mr X advised that his application for judicial review by the Federal Court had been dismissed and he was preparing to appeal to the Full Federal Court. He reported that he had been assigned a barrister through a refugee advocacy service and was receiving legal assistance.

Mr X maintained his innocence in relation to his conviction of indecent assault. He claimed that he had been unable to clear his name as the court processes had been inadequate and his legal representation had been insufficiently prepared to conduct a proper defence.

Mr X reported that his mental health has deteriorated in restricted detention and he feels frustrated and trapped. He said that he no longer engages with IHMS for mental health support as the counselling is unhelpful and repetitive.

He also advised that he rarely sees his case manager and did not find them to be helpful.

**Ombudsman assessment/recommendation**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in restricted detention for a cumulative period of more than four years. At the time of the Department of Immigration and Border Protection'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 restricted immigration detention may pose. In light of the significant length of time Mr X has remained in restricted detention, the Ombudsman recommends that consideration be given to granting Mr X a Bridging visa under s 195A while he awaits the resolution of his case.