

**ASSESSMENT BY THE COMMONWEALTH AND
IMMIGRATION 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 restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1981 |
| Ombudsman ID | 1002526-O |
| Date of DIBP's reviews | 11 October 2016 and 12 April 2017 |
| Total days in detention | 913 (at date of DIBP's latest review) |

Detention history

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| 14 October 2012 | 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. |
| 25 October 2012 | Transferred to Christmas Island Immigration Detention Centre (IDC). |
| 8 November 2012 | Transferred to Wickham Point IDC. |
| 31 January 2013 | Granted a Bridging visa and released from detention. |
| 29 January 2015 | Detained under s 189(1) following criminal charges. He was transferred to Villawood IDC. |
| 13 August 2015 | Transferred to Christmas Island IDC. |
| 1 October 2015 | Transferred to Yongah Hill IDC. |
| 8 February 2016 | Transferred to Villawood IDC. |

Visa applications/case progression

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| 31 January 2013 | The Minister intervened under s 195A to grant Mr X a Bridging visa. |
| 29 January 2015 | Bridging visa cancelled following criminal charges. |
| 30 January 2015 | Appealed the Department of Immigration and Border Protection's (the department) decision to cancel his Bridging visa to the Migration Review Tribunal (MRT). |
| 9 February 2015 | MRT affirmed original decision. |
| 13 August 2015 | The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application. |
| 4 November 2015 | Lodged a Temporary Protection visa (TPV) application. |
| 6 January 2016 | The Director of Public Prosecutions issued a Criminal Justice Stay Certificate (CJSC) preventing Mr X's removal from Australia. On 5 May 2016 the CJSC was cancelled following the resolution of his legal matters. |

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| 22 February 2016 | Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a new temporary visa application or providing supporting information for his existing application. He accepted the offer on 24 May 2016. |
| 25 May 2016 | The Minister declined to intervene under s 195A. |
| 1 July 2016 | Lodged a Safe Haven Enterprise visa (SHEV) application. On 4 July 2016 he withdrew his existing TPV application. |
| 24 August 2016 | SHEV application refused. |
| 25 August 2016 | Mr X's case was referred to the Immigration Assessment Authority (IAA) for review. |
| 17 November 2016 | The Minister again declined to intervene under s 195A. |
| 30 November 2016 | The IAA affirmed the decision to refuse Mr X's SHEV application. |
| 3 January 2017 | Requested judicial review by the Federal Circuit Court. Mr X is scheduled to attend a hearing on 18 May 2017. |

Other legal matters

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| 23 January 2015 | Mr X was arrested and charged with two offences relating to a break and entry incident. He was released on bail and subsequently re-detained under s 189(1). |
| 18 February 2016 | Mr X appeared before a district court and was found not guilty. |

Health and welfare

International Health and Medical Services advised that Mr X attended specialist counselling for management of stress and anxiety related to his immigration pathway. His condition continued to be monitored by the mental health team.

Ombudsman assessment/recommendation

Mr X was detained on 14 October 2012 after arriving in Australia by sea and has been held in restricted detention for a cumulative period of more than two and a half years.

On 13 August 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 1 July 2016 Mr X lodged an application for a SHEV.

Mr X's SHEV application was refused on 24 August 2016 and on 30 November 2016 the IAA affirmed the refusal. At the date 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 mental and physical health prolonged restricted immigration detention may pose. In light of the length of time Mr X has remained in restricted detention and the absence of any behavioural concerns, the Ombudsman recommends that he be considered for the grant of a Bridging visa while he awaits the resolution of his immigration status.