

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 more than 54 months (four and a half years). The previous assessment 1001666-O was tabled in Parliament on 20 October 2016. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1974
Ombudsman ID	1001666-O1
Date of DIBP's reports	30 December 2016 and 30 June 2017
Total days in detention	1,640 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment (1001666-O), Mr X has remained at Yongah Hill Immigration Detention Centre.

Recent visa applications/case progression

13 July 2016	Safe Haven Enterprise visa (SHEV) application refused. The Department of Immigration and Border Protection (the department) advised that the privacy breach ¹ was taken into account when his application was assessed.
15 July 2016	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
25 August 2016	The IAA affirmed the decision to refuse Mr X's SHEV application.
10 October 2016	Applied to the Federal Circuit Court (FCC) for judicial review. The FCC refused to hear his appeal as he had lodged his application outside the prescribed time limits. On 20 February 2017 the FCC refused to grant him a time extension for his judicial review application to be heard.
20 December 2016	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.
13 February 2017	The Minister declined to consider Mr X's case under s 195A.
30 June 2017	The department advised that as Mr X has no matters before the department, the courts or tribunals, he has been referred for removal action. Mr X has refused to return voluntarily.

¹ In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has continued to receive treatment for ongoing back pain caused by chronic sciatica with a spinal disc protrusion. He was prescribed with medication and attended physiotherapy but continued to experience pain. He underwent further investigative testing and was awaiting a neurosurgery and physiotherapy appointment at the time of IHMS's latest review.

IHMS further advised that Mr X was regularly reviewed by the mental health team for the management of stress, anxiety and a history of torture and trauma.

Information provided by Mr X

During an interview with Ombudsman staff on 25 May 2017 Mr X stated that after the IAA affirmed the department's decision to refuse his SHEV application, his case manager had advised him to seek judicial review in court. He stated that when he appeared in court his case was dismissed as there was no one to represent him and he was unable to afford a lawyer.

Mr X said that he met with his case manager last December to sign papers for a bridging visa and since then he has been told that he will be removed. He advised that he has no contact with his family, his mother had died and brother had been beaten and kidnapped. He believes that if he is returned to his home country he will be killed.

Mr X stated that he has been in detention for a long time and feels as though his mind is deteriorating. He is worried about his memory fading and stated that he cannot sleep without medication. He was experiencing ongoing back and wrist pain and said that he had been waiting to see a specialist for more than three years. Mr X stated that the immigration process makes him feel like nobody believes him and everyone assumes he is lying.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in an immigration detention facility for more than four and a half years. He has no matters before the department, the courts or tribunals and has been referred for removal action.