

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).

Name	Mr X
Citizenship	Country A
Year of birth	1993
Ombudsman ID	1002470-O
Date of DIBP's reviews	11 August 2016 and 9 February 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

20 May 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland ¹ by sea. He was transferred to Northern Immigration Detention Centre (IDC).
30 July 2013	Granted a Bridging visa and released from immigration detention.
22 October 2014	Re-detained under s 189(1) following the expiry of his Bridging visa and transferred to Adelaide Immigration Transit Accommodation.
27 October 2014	Transferred to Yongah Hill IDC.
13 May 2015	Transferred to Facility B.

Visa applications/case progression

The Department of Immigration and Border Protection (the department) advised that prior to ministerial intervention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A.	
30 July 2013	The Minister intervened under s 195A to grant Mr X a Bridging visa. The Bridging visa ceased on 30 July 2014.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
4 November 2015	Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He accepted the offer on the same day and was assigned a provider.
20 April 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.
23 May 2016	The Minister declined to intervene under s 195A.
21 June 2016	Lodged a Safe Haven Enterprise visa (SHEV) application.

¹ Following legislative amendment on 20 May 2013, all unauthorised maritime arrivals, including those who arrived on the Australian mainland or an 'excised offshore location' were barred from lodging a Protection visa application under s 46A.

11 August 2016	The department advised that Mr X has declared criminal convictions offshore but is not currently considered a person of interest to the Australian Federal Police.
27 September 2016	SHEV application refused.
30 September 2016	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
1 December 2016	The IAA affirmed the decision to refuse Mr X's SHEV application.
9 February 2017	The department advised that Mr X's case was being assessed against the guidelines for referral to the Minister under s 195A for the grant of a Bridging visa.

Health and welfare

International Health and Medical Services advised that Mr X attended anger management counselling and received treatment for anger management issues, cluster B personality disorder and a history of torture and trauma. In November 2014 and October 2016 Mr X was placed on Supportive Monitoring and Engagement observations and referred for counselling following incidents of self-harm and food and fluid refusal. His condition continued to be monitored by a general practitioner and psychologist.	
10 October 2014	The department advised that, prior to being re-detained, Mr X was involuntarily detained by police under mental health legislation and admitted to a hospital for assessment.
October 2014 – October 2016	Incident Reports recorded that Mr X self-harmed or threatened self-harm on multiple occasions.

Detention incidents

Incident Reports recorded that Mr X has been involved in a number of behavioural incidents, including displaying abusive, threatening and aggressive behaviour towards detention centre staff.
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Other matters

10 October 2014	The department advised that Mr X became aggressive and threatened self-harm during a case management meeting at a department office. He was subsequently involuntarily detained by police under mental health legislation and identified as a person of interest by the department. On 22 October 2014 he re-presented to a department office and was re-detained under s 189(1).
7 August 2016	The department was notified that Mr X had lodged a complaint with the Ombudsman's office in relation to lost property at Facility B. The department provided its response on 23 September 2016 and on 30 September 2016 the matter was finalised.

Ombudsman assessment/recommendation

Mr X was detained on 20 May 2013 after arriving on the Australian mainland by sea and has been held in restricted detention for a cumulative period of more than two and a half years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 21 June 2016 Mr X lodged an application for a SHEV.

Mr X's SHEV application was refused on 27 September 2016 and on 1 December 2016 the IAA affirmed the refusal.

On 9 February 2017 the department advised that Mr X's case was being assessed against the guidelines for referral to the Minister under s 195A for the grant of a Bridging visa.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged immigration detention may pose. The Ombudsman further notes with serious concern Mr X's history of self-harm and food and fluid refusal while in restricted detention.

In light of these mental health concerns, the Ombudsman recommends the department refer Mr X's case to the Minister under s 195A for consideration of the grant of a Bridging visa.