

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 restricted immigration detention for more than 42 months (three and a half years).

The first assessment 1003279 was tabled in Parliament on 14 September 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1977
Ombudsman ID	1002022-O
Date of DIBP's reviews	15 August 2016 and 13 February 2017
Total days in detention	1,276 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1003279), Mr X remained at Correctional Facility B, designated as an Alternative Place of Detention (APOD). ¹	
2 July 2016	Transferred to Correctional Facility D, designated as an APOD.
6 July 2016 – 6 October 2016	Transferred three times between various immigration detention facilities.
7 October 2016	Transferred to Facility E.

Recent visa applications/case progression

15 September 2016	Lodged a Safe Haven Enterprise visa (SHEV) application.
7 December 2016	Interviewed in relation to the SHEV application.
13 February 2017	The Department of Immigration and Border Protection (the department) advised that Mr X's case had been identified for referral to the Minister under s 195A of the <i>Migration Act 1958</i> for consideration of a Bridging visa and a submission was being drafted.

Other legal matters

17 July 2016	Mr X was summoned to appear at a Magistrate's Court in July 2016 to face a charge relating to his involvement in a disturbance at Facility F in November 2015.
November 2016	Mr X's court matters were finalised and a Commonwealth Recognizance Order was imposed for 12 months.

¹ Following a request by the department under s 5 of the *Migration Act 1958*, a state corrective services department held Mr X in immigration detention under s 189 for the purpose of maintaining the safety and good order of Facility C, where he was previously held.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of self-harm and aggressive behaviour. He was supported by the mental health team (MHT) for management of detention fatigue and remained on antidepressant medication. IHMS advised in January 2017 that Mr X had not presented recently with any mental health issues but the MHT continued to monitor and manage issues as clinically indicated.</p> <p>IHMS further advised that Mr X received treatment for physical health concerns including hepatitis C, bilateral knee pain and asthma. He attended a liver clinic for review of his hepatitis C condition in August 2016. An ultrasound revealed no abnormalities and the condition continued to be managed in accordance with a care plan and as clinically indicated. IHMS advised that Mr X had a history of pain in both knees with regular occurrences of fluid and had undergone surgery on his left knee. He was scheduled to have a magnetic resonance imaging scan of both knees in February 2017 at the recommendation of an orthopaedic specialist. He was prescribed with pain relief medication and further physiotherapy on his left knee was recommended. Mr X was also investigated for acute shortness of breath on exertion.</p>	
28 September 2016	An Incident Report recorded that Mr X complained to IHMS of shortness of breath and was transferred to hospital.
6 October 2016	An Incident Report recorded that Mr X self-harmed.
10 November 2016	Presented to a hospital emergency department with symptoms of exacerbated asthma. He was reviewed and diagnosed with drug withdrawal and anxiety and discharged.

Recent detention incidents

13 October 2016 and 2 January 2017	Incident Reports recorded that Mr X allegedly displayed abusive and aggressive behaviour.
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Information provided by Mr X

<p>During an interview with Ombudsman staff at Facility E in May 2017 Mr X advised he had been at Facility E for eight months but still had not gone to the mess for food and did not take part in activities. For food he went to a small kitchen in his compound for items such as noodles or bread and butter. He would have one or two meals every 48 hours. Around once a week friends would bring him fruit. He did not go to the mess as he feared that the Serco officers would humiliate him.</p> <p>Mr X said that previously there were arrangements for him to do individual activities in his room but these had stopped as staff in the centre now wanted him to go to classes. He would sometimes pass the time on a PlayStation or by watching television.</p> <p>He was very worried about his physical health including having hepatitis C, the state of his liver, knee pain and breathing issues. He also worried that he might have cancer. He was dissatisfied with the health services provided in immigration detention and felt that he often received inconsistent medical advice.</p> <p>Mr X also advised he would be taking his immigration case to court but had not yet initiated proceedings.</p>

Ombudsman assessment/recommendation

Mr X was detained on 17 August 2013 after arriving in Australia by sea and has been held in restricted detention for more than three 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 15 September 2016 Mr X lodged a SHEV application.

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 length of time Mr X has remained in detention and the sharply reduced number of behavioural incidents in which he has allegedly been involved, the Ombudsman recommends that Mr X's case be referred to the Minister for consideration under s 195A for the grant of a Bridging visa while he awaits processing of his SHEV application.