

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the sixth s 486O assessment on Mr X who has remained in immigration detention for more than 90 months (seven and a half years). The previous assessment 1000034-O was tabled in Parliament on 24 May 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1000034-O1
Date of DIBP's report	3 June 2017
Total days in detention	2,732 (at date of DIBP's report)

Recent detention history

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

Recent visa applications/case progression

13 February 2017	<p>Mr X's case was referred on a first stage ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. This submission noted that Mr X had been assessed to be a low risk of harm to the Australian community using the Department of Immigration and Border Protection (the department)'s Community Protection Assessment Tool (CPAT).</p> <p>This submission further advised that on 6 January 2017 an International Health and Medical Services (IHMS) Medical Director had assessed that Mr X's mental health condition was exacerbated by remaining in the detention environment.</p> <p>On 4 April 2017 the Minister agreed to consider Mr X's case on a second stage submission.</p>
7 March 2017	<p>Mr X was indicatively found to engage Australia's protection obligations during the assessment of his Safe Haven Enterprise visa (SHEV) application. His case was subsequently referred for security and character checks.</p>
26 April 2017	<p>Mr X's case was referred to the Character Assessment and Cancellation Branch for consideration of his SHEV application against the character provisions of s 501.</p> <p>The department provided further information advising that consideration of Mr X's bridging visa submission was consequently placed on hold pending finalisation of the assessment of his SHEV application under s 501.</p>
17 May 2017	<p>Issued with a Notice of Intention to Consider Refusal of his SHEV application under s 501. Mr X provided a response on 20 June and 30 June 2017.</p>

Health and welfare

IHMS advised that Mr X was reviewed by a psychiatrist in November 2016 for the management of an adjustment disorder resulting from his prolonged detention. The psychiatrist noted that he was struggling to maintain hope and presented as increasingly downcast, tearful and despondent. He was referred for specialist counselling and admitted to a psychiatric hospital for assessment and treatment in December 2016. Upon his discharge in January 2017 he was assessed to have ongoing low mood and further mental health support and medication was recommended.

In March 2017 Mr X's mood was reported to have improved after receiving positive immigration news. IHMS further advised that Mr X attended physiotherapy for management of back pain.

December 2016	Admitted to a psychiatric hospital for three weeks.
6 January 2017	Further information provided by the department advised that following Mr X's discharge from a psychiatric hospital, an IHMS Medical Director assessed that his mental health condition was being exacerbated by remaining in the detention environment.
18 April 2017	IHMS advised that there was no indication in Mr X's medical record during this reporting period to indicate that his health was being adversely affected by his current placement.

Other matters

26 June 2017	The Office of the Commonwealth Ombudsman opened an investigation into the circumstances of Mr X's ongoing held detention in light of his qualified security assessment being granted in May 2016. The department provided responses on 26 July and 9 October 2017. The investigation remains ongoing.
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Information provided by Mr X

During an interview with Ombudsman staff on 21 June 2017 Mr X advised that he was extremely relieved that in March 2017 he had been found to be owed protection outright and was no longer excluded on the grounds of his involvement with a militant group. He explained that he was just a child when he was coerced into joining an army and expressed that he was glad that his claims had finally been accepted.

He advised that he had been cleared to live in the community by the Australian Security Intelligence Organisation in May 2016 and he did not understand why he was still detained over a year after that clearance.

Mr X said that he found it hard to get through each day. He felt very depressed and had a constant headache. He advised that he had been admitted to a psychiatric hospital twice, but did not find that helpful. He tried to keep busy in detention by taking English classes, playing the guitar, going to the gym and participating in sports. He also helped the groundskeeper with mowing and gardening, which he really enjoys, but he said that when he goes back to his room he feels dead inside and like he has lost everything. Mr X stated that he was 23 years old when he was initially detained and now he is 31. It made him very sad to think that he had spent the majority of his twenties in detention.

Mr X said that years ago there was only a low fence around Facility B and the detainees were allowed to go out to play cricket and had a lot more freedom. He said that many of those freedoms had been taken away and now Facility B felt like a high security facility. He claimed that some detention centre staff had previously worked at high security prisons and they brought that attitude with them. He found this difficult as it brought back a lot of bad memories from his time as a child in the army. He thought it was unfair that policy changes affected all detainees, even those such as himself who had never misbehaved when they had more freedoms.

Information provided by Mr X's advocate

Mr X's advocate contacted the Ombudsman's office on 12 July 2017 to advise that a recent protection visa refusal for another detainee who formerly held an adverse security assessment had triggered extreme levels of distress in Mr X and the other two remaining long-term detainees from Country A at Facility B. She advised that she was very concerned about the deteriorating mental health of these detainees and said that in all of the years that she has been a pastoral visitor to these men, she has never observed their mental state to be so low.

Ombudsman assessment/recommendation

Mr X has been found to engage Australia's protection obligations and has been held in an immigration detention facility for more than seven and a half years.

The Ombudsman's five previous assessments of Mr X's circumstances have articulated significant concerns about his ongoing detention. The Ombudsman's previous assessment recommended that Mr X be considered for a community detention placement while he awaits the outcome of his SHEV application. On 24 May 2017 the Minister advised that he had asked the department to finalise an assessment of the risk posed to the Australian community before considering a community detention placement for Mr X.

The Ombudsman is concerned about the significant deterioration of Mr X's mental health over the seven and a half years he has spent in detention and notes he recently required admission to a psychiatric hospital. The Ombudsman also notes that the department has assessed Mr X through its CPAT as being a low risk of harm to the Australian community. Accordingly, the Ombudsman does not consider Mr X's current detention placement to be appropriate.

1. In light of Mr X's protracted immigration pathway, the significant length of time he has remained in detention, his deteriorating mental health and the department's assessment that he does not pose a risk to the Australian community, the Ombudsman recommends that the Minister urgently consider Mr X's case under s 195A and grant him a bridging visa.

In January 2017 an IHMS Medical Director assessed that Mr X's mental health condition was being exacerbated by remaining in the detention environment. The IHMS report dated 18 April 2017 which was provided to the Ombudsman fails to include this information, and states to the contrary, that there is no evidence to suggest that Mr X's health is being adversely affected by his current placement.

2. The Ombudsman is seriously concerned that IHMS has provided our Office with an incomplete and inaccurate assessment of Mr X's health. The Ombudsman recommends that the department have IHMS review its processes to ensure that its reports are consistent and comprehensively assess the impact of detention placement on detainees' health.
3. The Ombudsman further recommends that the department have IHMS conduct an assessment of how Mr X's health has been affected by the duration of his immigration detention, and that this assessment be provided to the Minister for consideration along with the s 195A submission.

Mr X is part of a cohort of detainees who have been found to engage Australia's *non-refoulement* obligations, but have been held in immigration detention for a significant period of time. Mr X was initially detained while awaiting the outcome of a security assessment, and now as the subject of a qualified security assessment.

Mr X's SHEV application is currently being considered for refusal under s 501. The Ombudsman notes with serious concern that if Mr X's SHEV is refused and he is not granted a bridging visa, it appears he will either be detained indefinitely, or returned to Country A in violation of Australia's obligations under international law.

4. The Ombudsman recommends that the department brief the Minister on management options for the cohort of long-term detainees with qualified security assessments, and that the Minister prioritise finding a solution for this cohort that meets Australia's *non-refoulement* obligations without detaining these individuals indefinitely.

The Ombudsman further considers that the ongoing long-term detention of this cohort of vulnerable individuals in increasingly hardened immigration detention facilities is inappropriate.

5. In the event that the Minister declines to grant Mr X a bridging visa, the Ombudsman recommends that the department transfer him to a lower security detention placement that is more appropriately tailored to accommodating vulnerable individuals facing prolonged immigration detention, such as a designated alternative place of detention in the community.