

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 immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002326-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1974
Ombudsman ID	1002326-O1
Date of DIBP's reports	24 February 2017 and 24 August 2017
Total days in detention	1,276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Yongah Hill Immigration Detention Centre (IDC).	
3 May 2017	Transferred to Christmas Island IDC.

Recent visa applications/case progression

25 August 2016	The Immigration Assessment Authority (IAA) affirmed the refusal of Mr X's Safe Haven Enterprise visa (SHEV) application.
27 September 2016	Applied to the Federal Circuit Court (FCC) for judicial review. He is scheduled to attend a hearing on 22 August 2018.
24 February 2017	The Department of Immigration and Border Protection (the department) advised that Mr X's case was identified for inclusion on a ministerial submission that was being drafted under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has a history of recurring depression and presented with symptoms of detention fatigue, including tiredness and hopelessness. Mr X also presented with stress and poor sleep related to concerns about his family in Country A. He attended a mental health assessment in November 2016 and an IHMS mental health nurse noted that his prolonged detention was impacting on his mental health. Mr X's condition continues to be monitored by the mental health team and he was encouraged to regularly attend counselling.	
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Information provided by Mr X

During an interview with Ombudsman staff on 24 November 2017 Mr X stated that he had applied to the FCC for judicial review and was scheduled to attend a hearing in August 2018. He said that he was receiving legal assistance from a private lawyer and had been advised that he was unlikely to receive an outcome from the FCC until 2019.

Mr X reported that his case manager had said that he was being considered for a bridging visa, but he was previously advised that he was unlikely to be granted one. He stated that his case managers regularly change and their meetings are infrequent.

Mr X explained that he used to be placed in a separate compound to detainees with a criminal history, however he was recently moved into a shared compound. He claimed that he was bullied and intimidated by those detainees with a criminal history and was seriously concerned for his safety and wellbeing. He said he felt scared and helpless and was reluctant to make complaints to Serco because he feared retribution from other detainees.

Mr X said that he was frustrated about the length of time he has remained in detention and does not understand why he has not been released. He advised that he has not been involved in any behavioural incidents in detention and has only been patiently waiting for an outcome.

Ombudsman assessment/recommendation

Mr X was detained on 25 April 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for more than three and a half years.

Mr X's SHEV application was refused on 13 July 2016 and on 25 August 2016 the IAA affirmed the refusal. At the time of the department's latest report 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 physical and mental health prolonged immigration detention may pose. IHMS has advised that Mr X has a history of depression and presented with symptoms of detention fatigue, including tiredness and hopelessness. Further, an IHMS mental health nurse advised that Mr X's prolonged detention was impacting on his mental health.

In light of these mental health concerns and the absence of any recent behavioural or security concerns, the Ombudsman recommends that Mr X be placed in a less restrictive detention facility while he awaits the resolution of his immigration pathway.