

## ASSESSMENT BY THE COMMONWEALTH 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 immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1983
<b>Ombudsman ID</b>	1002639-O
<b>Date of DIBP's reports</b>	11 April 2017 and 10 October 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

3 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
18 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
20 August 2013	Transferred to an APOD, Christmas Island.
30 July 2014	Transferred to Wickham Point IDC.
10 September 2014	Transferred to Christmas Island IDC.
21 December 2014	Transferred to Bladin APOD.
15 January 2015	Granted a bridging visa and released from immigration detention.
23 September 2016	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Adelaide Immigration Transit Accommodation.

### Visa applications/case progression

12 March 2014	The Department of Immigration and Border Protection (the department) notified Mr X of the unintentional release of personal information. <sup>1</sup>
9 January 2015	Granted a bridging visa valid until 15 January 2016.
1 July 2015	Bridging visa cancelled under s 116 due to criminal charges.
8 July 2015	Applied to the Administrative Appeals Tribunal (AAT) for merits review of his bridging visa cancellation.
23 October 2015	Issued with a Criminal Justice Stay Certificate (CJSC) under s 417 preventing his removal from Australia.
3 November 2015	The department refused to grant Mr X a Criminal Justice Stay visa.
27 November 2015	AAT affirmed original decision.

<sup>1</sup> 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.

7 September 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
27 September 2016	CJSC was cancelled.
10 October 2016	Mr X was notified that he was eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He declined the offer on 2 November 2016.
15 November 2016	Lodged a Safe Haven Enterprise visa (SHEV) application.
28 February 2017	SHEV application refused.
6 March 2017	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
7 April 2017	The IAA affirmed the decision to refuse Mr X's SHEV application.
13 April 2017	Mr X's case was assessed against the guidelines under s 195A but was not referred to the Minister.
4 May 2017	Applied to the Federal Circuit Court for judicial review of the IAA's decision. A hearing was scheduled for 12 November 2018.
14 September 2017	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a bridging visa.

#### **Other legal matters**

29 June 2015	Charged with multiple sexual assault offences and remanded in custody.
23 September 2016	Appeared before a district court and the charges were withdrawn.

#### **Health and welfare**

<p>International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and educated on lifestyle changes for the management of type 2 diabetes and chronic back pain. He was also monitored for eye concerns and attended multiple optometrist and ophthalmologist reviews.</p> <p>IHMS further advised that Mr X was reviewed by a psychiatrist in July 2017 for the management of an adjustment disorder with depressed mood and associated sleeping difficulties. The psychiatrist noted that Mr X's mental health concerns were related to his detention circumstances and he was prescribed with medication for sleeping difficulties. Mr X also disclosed a history of torture and trauma and was referred for specialist counselling.</p>	
18 August 2014	An Incident Report recorded that Mr X threatened self-harm.

#### **Other matters**

The department advised that Mr X's wife and children reside in the community on bridging visas and were included in his SHEV application.	
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## Ombudsman assessment

Mr X was detained on 3 August 2013 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than two and a half years.

On 7 September 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 15 November 2016 Mr X lodged an application for a SHEV.

Mr X's SHEV application was refused on 28 February 2017 and on 7 April 2017 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 advised that Mr X has received treatment for mental health concerns related to his immigration detention, including depression and difficulty sleeping.

On 14 September 2017 Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a bridging visa.