

## 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 seven years. The previous assessment 1000689-O1 was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1977
<b>Ombudsman ID</b>	1000689-O2
<b>Date of department's report</b>	27 October 2017
<b>Total days in detention</b>	2,550 (at date of department's report)

### Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Facility B.	
July 2017	Transferred to Facility C.

### Recent visa applications/case progression

June 2017	The Administrative Appeals Tribunal (AAT) affirmed the decision to refuse Mr X's Safe Haven Enterprise visa (SHEV) application.
June 2017	The Minister declined to intervene under s 195A of the <i>Migration Act 1958</i> to grant Mr X a bridging visa.
July 2017	Applied to the Federal Circuit Court (FCC) for judicial review of the AAT's decision. He was scheduled to attend a hearing in November 2017.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued be prescribed with medication for the treatment of depression and was placed on a waiting list to be reviewed by a psychologist.
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### **Information provided by Mr X**

During an interview with Ombudsman staff in March 2018 Mr X explained that he did not understand why his SHEV had been refused after he had been found to be owed protection in December 2011. He stated that he was told that the circumstances in Country A have changed, but he is still afraid of returning. Mr X advised that in November 2017 the Minister withdrew from the FCC and his case was remitted to the AAT for reconsideration due to an error of law.

Mr X explained that he was released from a correctional facility in Country D for two convictions over 10 years ago. He stated that he has not committed any crimes in Australia and does not understand why he remains in a detention facility. He stated that he wants to be given another chance and wants to be able to start living his life.

Mr X advised that while he often feels upset, he does not like to engage with IHMS because he does not like to think about his past or current situation as it makes him feel worse. He explained that he continues to take antidepressant medication.

Mr X stated that he has been at Facility C for over eight months, and that he wishes to be transferred to Facility B so that his friends can visit him. He has a lot of friends that live in City E, and some of those friends he considers to be like family. He explained that he no longer contacts his family in Country A because he feels like he is useless to them, having been in detention for more than seven years. He stated that he told his family to forget about him because he cannot do anything for them anymore.

### **Ombudsman assessment/recommendation**

Mr X was detained in November 2010 after arriving in Australia by sea and has remained in an immigration detention facility for more than seven years.

In June 2017 the AAT affirmed the decision to refuse Mr X's SHEV application. In July 2017 Mr X applied to the Federal Circuit Court for judicial review of the AAT's decision.

The Ombudsman's previous assessment recommended that in light of his prolonged detention, mental health concerns and lack of behavioural incidents, Mr X be considered under 195A for the grant of a bridging visa.

On 13 September 2017 the Minister advised that he had recently considered Mr X's case under s195A and declined to intervene.

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 continues to be prescribed with medication for the treatment of ongoing depression.

Mr X has remained in immigration detention for more than seven years and the Ombudsman has consistently recommended that Mr X be considered for either a community placement or a bridging visa.

1. In light of the significant length of time Mr X has remained in detention and the absence of any recent behavioural concerns, the Ombudsman strongly recommends that Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.
2. The Ombudsman also recommends that if Mr X is not granted bridging visa that he be considered for transfer to Facility B so that he can reside closer to his support network.