

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Mr X who has remained in immigration detention for more than 48 months (four years). The previous assessment 1002118-O was tabled in Parliament on 18 October 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Stateless, born in Country A
Year of birth	1997
Ombudsman ID	1002118-O1
Date of DIBP's report	21 August 2017
Total days in detention	1,458 (at date of DIBP's report)

Recent detention history

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

Recent visa applications/case progression

20 April 2017	Issued with a Notice of Intention to Consider Refusal of his Safe Haven Enterprise visa (SHEV) application ¹ under s 501 of the <i>Migration Act 1958</i> . Mr X's agent provided responses and submissions on 24 April 2017, 18 May 2017 and 8 June 2017.
29 May 2017	Found not to meet the guidelines for referral to the Minister under s 197AB for the grant of a community placement.
14 August 2017	The Department of Immigration and Border Protection (the department) advised Mr X's agent that his case is being managed as a priority while he remains in an immigration detention facility.
21 August 2017	The department advised that Mr X had been issued with a qualified security assessment on 26 February 2016.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X attended psychological counselling for multiple mental health concerns, including an adjustment disorder, an oppositional defiant disorder, depression, a mild intellectual impairment and a history of torture and trauma. In February 2017 a psychiatrist reported that Mr X is a young, isolated and vulnerable person with detention fatigue, poor social skills and impulsivity. IHMS reported that psychiatrists have continuously advised that Mr X's ongoing detention is detrimental to his mental health and recommended that he be released into the community with mental health support and enrolment in an educational course such as TAFE.

¹ Mr X's mother, Ms Y, lodged a SHEV application on 31 March 2016 which listed him as a dependent. Ms Y was granted a SHEV on 2 December 2016 and is the subject of Ombudsman assessment 1002116-O.

Recent detention incidents

9 April 2017	An Incident Report recorded that spontaneous use of force and mechanical restraints were required following aggressive behaviour during a room search. Mr X was offered medical assistance after the incident but declined.
5 June 2017	An Incident Report recorded that Mr X was allegedly assaulted by another detainee. The incident was referred to the police for investigation.

Other matters

23 May 2017	A complaint was lodged on behalf of Mr X by his legal representative with the Office of the Commonwealth Ombudsman in relation to concerns regarding the investigation of instances of alleged assault of Mr X by Serco officers and other detainees at Facility C. On 28 August 2017 the department provided a response. The matter remained ongoing at the time of reporting.
23 May 2017	The department was notified that Mr X lodged a complaint with the Australian Human Rights Commission. On 22 August 2017 the department advised that its response was delayed. The matter remained ongoing at the time of the department's latest report.

Information provided by Mr X

During an interview with Ombudsman staff on 7 September 2017 Mr X advised that he was waiting for a decision on the SHEV application that his mother was granted. Mr X stated he does not understand why he is treated like he is high-risk when he has had no significant incidents at Facility C. He also stated that he wanted to be able to have access to the community areas at Facility C, but the higher security compound he was placed in was the only location he could have a single room. He explained that he felt like he needed a single room because he struggled to get along well with others.

He stated that he did not feel safe at Facility C and was afraid of the Serco officers because he felt like they treated him badly. Mr X advised that his mental health was getting worse day by day and he felt like his youth was over. He was taking antidepressant medication but did not find IHMS staff helpful because he felt like they did not listen to or understand him. He was attending external counselling and found them a bit better than IHMS.

Mr X emphasised that he just wanted to be able to study or have daily programs or excursions to keep his mind busy. He stated that he used to receive one-on-one teaching for a period of eight months but the centre had stopped the program and he did not know why.

Mr X advised that his brother visited him three times a week but his mother was very unwell and in hospital so he is unable to contact her often.

Ombudsman assessment/recommendation

Mr X was detained on 25 August 2013 after arriving in Australia by sea and has remained in immigration detention for more than four years.

On 26 February 2016 Mr X was issued with a qualified security assessment.

On 31 March 2016 a SHEV application was lodged with Mr X listed as a dependant. Mr X's SHEV application was refused on 20 June 2016. The Immigration Assessment Authority reviewed the decision and on 11 July 2016 the application was remitted to the department with the direction that he is a refugee within the meaning of s 5H.

On 20 April 2017 Mr X was issued with a Notice of Intention to Consider Refusal of his SHEV application under s 501.

The department advised that Mr X's case is being managed as a priority while he remains in an immigration detention facility.

Noting Mr X's intellectual impairment, complex mental health conditions and the recommendations of health professionals that he engage in an educational course, the Ombudsman's previous assessment recommended that Mr X be considered under s 197AB for a community placement, and if he was not granted a community placement, that the department explore options for facilitating visits to his mother and enabling him to access adult education.

On 18 October 2017 the Minister noted the recommendations and stated that Mr X was found not to meet the guidelines under s 197AB for referral to him for a community placement. The Minister advised that the department regularly facilitates visits between Mr X and his family and that Mr X had been encouraged to access the educational programs offered to detainees by the department.

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 reported that treating psychiatrists have continuously advised that as a young and vulnerable person, Mr X's ongoing detention is detrimental to his mental health and recommended that he be released into the community with mental health support and enrolment in an educational course such as TAFE.

1. In light of the significant length of time Mr X has remained in detention, his mental health concerns and vulnerability, the recommendations of treating psychiatrists, and the recent assessment that Mr X does not meet the guidelines for a community placement, the Ombudsman recommends that the department explore options to transfer him to a lower security detention placement that is more appropriately tailored to accommodating vulnerable individuals, such as a designated alternative place of detention in the community.
2. The Ombudsman recommends again that the department explore options to provide Mr X with access to adult education that is tailored to his capacity and needs with consideration of his intellectual impairment.
3. The Ombudsman further recommends that the department continue to prioritise the resolution of Mr X's immigration status.