

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 two years.

Name	Mr X
Citizenship	Country A
Year of birth	1991
Ombudsman ID	1002801-O
Date of department's report	14 November 2017
Total days in detention	733 (at date of department's report)

Detention history

April 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to Facility B.
May 2013	Transferred to Facility C.
June 2013	Granted a bridging visa and released from immigration detention.
January 2015	Re-detained under s 189(1) following the cancellation of his visa under s 116. He was transferred to Facility D.
February 2015	Bridging visa reinstated and released from immigration detention.
February 2016	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Facility D.
July 2017	Transferred to Facility B.

Visa applications/case progression

June 2013	The Minister agreed to intervene under s 195A to grant Mr X a bridging visa.
January 2015	Issued with a Notice of Intention to Consider Cancellation of his bridging visa following his involvement in a criminal matter. On the same day his visa was cancelled under s 116.
February 2015	The Migration Review Tribunal set aside the decision to cancel Mr X's visa and Mr X's bridging visa was reinstated.
September 2015	Mr X's bridging visa ceased and he remained unlawfully in the community.
February 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
March 2016	Lodged a bridging visa application. In March 2016 the application was refused.
March 2016	The Administrative Appeals Tribunal affirmed the refusal decision.
May 2016	Lodged a Safe Haven Enterprise visa (SHEV) application. The application was refused in August 2016.

November 2016	The Immigration Assessment Authority (IAA) affirmed the decision to refuse Mr X's SHEV application.
June 2017	The Federal Circuit Court (FCC) set aside the decision of the IAA and remitted Mr X's case to the Department of Home Affairs (the department).
July 2017	The Minister appealed the decision of the FCC to the Federal Court (FC) and in March 2018 the FC dismissed the Minister's appeal.
October 2017	Identified for assessment against the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.

Other legal matters

December 2014	Mr X received a fine for various offences.
January 2016	Mr X was found guilty of multiple offences but no conviction was recorded.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received counselling and a treating psychologist noted that he would benefit from psychological treatment in an environment that he perceived to be safe and secure.

In August 2017 a reviewing psychiatrist found that Mr X did not show any clear symptoms of mental health issues but noted that symptoms of depression or post-traumatic stress disorder (PTSD) may become more overt the longer Mr X remains in detention. The psychiatrist also noted the advice of a specialist counselling service that the detention environment may be a trigger for Mr X's PTSD symptoms.

IHMS further advised that Mr X was prescribed medication and referred to a specialist for a recurring infection.

December 2016	An Incident Report recorded that Mr X threatened self-harm.
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Ombudsman assessment/recommendation

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

In February 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and in May 2016 Mr X lodged an application for a SHEV.

Mr X's SHEV application was refused in August 2016 and in November 2016 the IAA affirmed the refusal.

In June 2017 the FCC set aside the decision of the IAA and remitted Mr X's case to the department and in July 2017 the Minister appealed this decision to the FC.

In March 2018 the FC dismissed the Minister's appeal.

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. A specialist counselling service advised that the detention environment may be a trigger for Mr X's PTSD symptoms and a psychiatrist noted that symptoms of depression and PTSD may become more overt the longer he remains in detention.

1. The Ombudsman recommends that the department assess Mr X's detention placement and consider him for transfer to a less restrictive facility.