

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 a cumulative period of more than 42 months (three and a half years). The previous assessment 1002082 was tabled in Parliament on 14 September 2015. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1996
Ombudsman ID	1000997-O
Date of department's report	27 September 2017
Total days in detention	1,276 (at date of department's report)

Recent detention history

26 April 2017	Re-detained under s 189(1) of the <i>Migration Act 1958</i> following the final determination of his case. He was transferred to Facility B.
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Recent visa applications/case progression

30 June 2015	The Federal Circuit Court affirmed the Refugee Review Tribunal's decision to affirm the Department of Home Affairs' (the department) decision not to grant Mr X a Protection visa.
12 August 2015	The department notified Mr X of the unintentional release of personal information ¹ and invited him to provide information regarding the implications concerning his case.
2 September 2015	The Full Federal Court (FFC) ² found that the International Treaties Obligations Assessment (ITOA) process undertaken by the department to assess the implications of the data breach was procedurally unfair.
27 July 2016	The Minister appealed the FFC decision and the High Court found that the ITOA process was not procedurally unfair. ³
26 July 2017	The Minister lifted the bars under ss 46A and 48B to allow Mr X to lodge a temporary visa application.
13 September 2017	Lodged a Safe Haven Enterprise visa (SHEV) application.
27 September 2017	The department advised that Mr X's case had been identified for assessment against the guidelines under s 195A for the grant of a bridging visa.

¹ 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.

² *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

³ *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X did not receive treatment for any major physical or mental health issues during this assessment period.

Information provided by Mr X

During an interview with Ombudsman staff on 5 September 2017 Mr X explained that he did not understand why he had been re-detained as he had not had any trouble while living in the community. He said that the uncertainty of what is happening with his immigration status makes things very hard. Mr X stated that he was very grateful for the assistance of IHMS and that his mental and physical health was quite good. He explained that he has friends that live in Sydney that visit him every week.

Ombudsman assessment/recommendation

Mr X was detained on 5 June 2012 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than three and a half years.

On 26 July 2017 the Minister lifted the bar under ss 46A and 48B to allow Mr X to apply for a temporary visa and on 13 September 2017 Mr X lodged an application for a SHEV.

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.

In light of the length of time Mr X has remained in detention, his age and the absence of any recent behavioural or security concerns, the Ombudsman recommends that Mr X be considered under s 195A for the grant of a bridging visa while he awaits the resolution of his SHEV application.