

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fourth s 486O assessment on Mr X who has remained in restricted immigration detention for more than 60 months (five years).

The first assessment 1001514 was tabled in Parliament on 24 September 2014, the second assessment 1001961 was tabled in Parliament on 27 May 2015 and the third assessment 1002465 was tabled in Parliament on 14 September 2016. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1980
Ombudsman ID	1000961-O
Date of DIBP's reviews	26 October 2016 and 26 April 2017
Total days in detention	1,822 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002465), Mr X remained at Facility B.	
8 February 2017	Transferred to Christmas Island Immigration Detention Centre (IDC).

Recent visa applications/case progression

24 April 2016	Mr X applied to the Federal Circuit Court for judicial review of his negative International Treaties Obligation Assessment (ITOA). On 19 September 2016 Mr X withdrew his application for review.
26 July 2016	Lodged a Safe Haven Enterprise visa (SHEV).
27 July 2016	The Minister appealed the Full Federal Court decision and the High Court found that the ITOA process was not procedurally unfair. ¹
3 August 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. On 11 October 2016 the Minister declined to intervene.
20 February 2017	SHEV application refused.
22 February 2017	Mr X applied to the Administrative Appeals Tribunal for merits review.
31 March 2017	The Minister declined to intervene under s 197AB to allow Mr X to reside in community detention.

¹ *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to attend specialist counselling for the management of detention fatigue and a history of torture and trauma. In February 2017 Mr X was reviewed by a psychologist and presented with symptoms of anxiety relating to his immigration status. He attended psychological counselling and was provided with psychological education techniques. His condition continued to be monitored by the IHMS mental health team.

IHMS further advised that Mr X was provided with treatment for inflammatory rheumatoid arthritis, reflux and a skin condition. He was scheduled to attend a rheumatology review in January 2017 but this appointment was cancelled following his transfer to Christmas Island IDC. On 14 February 2017 he was provided with a new referral.

10 February 2017

An Incident Report recorded that Mr X threatened self-harm.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 2 August 2017 Mr X advised that he was very disappointed and sad because he had just received a negative outcome from the AAT. He said that he could appeal to the Federal Circuit Court but he did not want to spend another year waiting in immigration detention. He advised that he thought the AAT would find in his favour because other people in his situation had received positive outcomes recently.

Mr X advised that he cannot return to Country A because he faced political issues and would be arrested. He also said that he would have no family support as both his parents have passed away and his brother is missing.

Mr X said that he wished to be transferred back to Facility B as he would be able to see his friends in the community. He said he had more in common with the other refugees at Facility B as the s 501 cohort detained at Christmas Island IDC have a very different mindset.

Mr X advised that he feels isolated in detention and is very worried about his future. He said that he regularly attends counselling and finds it helpful.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in restricted detention for more than five years. At the time of the department's latest review Mr X was awaiting the outcome of merits review.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged restricted immigration detention may pose. The Ombudsman notes with serious concern advice from IHMS that Mr X continues to receive treatment for detention fatigue and anxiety related to his immigration status.

In light of the significant length of time Mr X has remained in an immigration detention facility and the absence of any behavioural or security concerns, the Ombudsman recommends that Mr X be transferred to Facility B to enable him to reside closer to his support network while he awaits the resolution of his immigration status.