

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 four and a half years. The previous assessment 1002022-O was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1977
Ombudsman ID	1002022-O1
Date of department's reports	15 August 2017 and 13 February 2018
Total days in detention	1,640 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Facility E.	
June 2017	Transferred to Facility F.

Recent visa applications/case progression

March 2017	Safe Haven Enterprise visa (SHEV) application refused.
May 2017	The Immigration Assessment Authority (IAA) affirmed the decision to refuse Mr X's SHEV application.
August 2017	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 Final Departure Bridging visa (FDBV).
October 2017	The Minister declined to intervene under s 195A to grant Mr X an FDBV.
November 2017	The Federal Circuit Court (FCC) dismissed Mr X's application for judicial review of the IAA's decision.
November 2017	Applied to the Federal Court for judicial review. He attended a directions hearing in December 2017.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for multiple physical health concerns. Mr X underwent a magnetic resonance imaging scan which identified cartilage degeneration in his knee. He did not require surgery at the time and his condition was managed with physiotherapy and pain relief medication. Mr X was also prescribed with anti-inflammatory medication and was referred for investigative testing for hand, shoulder and upper limb issues. He was also scheduled to attend a respiratory specialist appointment in October 2017 for investigation of his shortness of breath on exertion, which a general practitioner (GP) noted was most likely related to anxiety.

IHMS further advised that Mr X was reviewed by a psychologist and prescribed with medication for the management of complex mental health concerns. Treating medical professionals reported that Mr X was experiencing symptoms of detention fatigue and sleeping difficulties.

November 2017

An Incident Report recorded that Mr X refused food and fluid.

Recent detention incidents

September 2017

An Incident Report recorded that spontaneous use of force was required during a disturbance involving multiple detainees, including Mr X.

Ombudsman assessment/recommendation

Mr X was detained in August 2013 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than four and a half years. At the time of the Department of Home Affairs' latest report Mr X was awaiting the outcome of judicial review.

The Ombudsman's previous assessment recommended that in light of the length of time Mr X has remained in detention and the sharply reduced number of behavioural incidents in which he had allegedly been involved, Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa while he awaits the processing of his SHEV application.

On 13 September 2017 the Minister advised that Mr X had been referred to him for his consideration under s 195A for the grant of a bridging visa.

In October 2017 the Minister declined to intervene under s 195A to grant Mr X an FDBV.

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 advised that Mr X required treatment for the management of ongoing mental health concerns.

In light of the significant length of time Mr X has remained in detention and the reduced number of behavioural incidents in which he has allegedly been involved, the Ombudsman again recommends that Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.