

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN TO FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O report on Mr X who has remained in immigration detention for a period of more than 42 months (three and a half years).

The first report 1001858 was tabled in Parliament on 17 June 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1971
<b>Ombudsman ID</b>	1003369
<b>Date of DIBP's reports</b>	28 August 2015 and 26 February 2016
<b>Total days in detention</b>	1276 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001858), Mr X has remained at Facility B.

### Recent visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A of the <i>Migration Act 1958</i> .	
26 May 2014	DIBP notified Mr X of the unintentional release of personal information <sup>1</sup> and advised that the privacy breach would be taken into account when considering his protection claims.
26 June 2015	Mr X's case was referred on a ministerial submission for consideration under ss 195A and 197AB for the grant of a Bridging visa or a community detention placement.
7 August 2015	Following the Minister intervening under s 46A (date not provided), DIBP invited Mr X to lodge a temporary visa application.
2 September 2015	Lodged a Temporary Protection visa (TPV) application with associated Bridging visa application.
12 October 2015	The Bridging visa application was deemed to be invalid.
30 December 2015	DIBP advised that the ss 195A and 197AB submission was returned to DIBP for updating and redrafting.
22 January 2016	DIBP notified Mr X that he is eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a temporary visa application. On the same day he accepted the offer and DIBP advised it had assigned a PAIS provider to him.

<sup>1</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

### Other legal matters

The Ombudsman's previous report (1001858) stated that on 18 December 2013 Mr X was convicted of common assault on his daughter and a 12-month good behaviour bond was imposed. This information was provided by DIBP in its 486N review dated 23 September 2014.

On 1 July 2015 Mr X provided the Ombudsman's office with a copy of the court order which stated that Mr X was found guilty but a conviction was not recorded and he was directed to enter into a conditional 12-month good behaviour bond.

30 September 2015

Court C issued Mr X with a Prohibition Order which prohibited him from contacting his daughter until 23 October 2015.

### Health and welfare

International Health and Medical Services (IHMS) reported that Mr X continued to be provided with specialist treatment for chronic pain. In March 2015 a benign tumour was identified and he underwent surgery in August 2015. Due to complications during the surgery an additional procedure was performed by another specialist. Mr X reported continued pain since the surgery and an appointment with a neurologist for a second opinion was scheduled for March 2016.

Mr X has also continued to receive treatment and specialist counselling for ongoing mental health issues including a history of torture and trauma and an adjustment disorder with anxiety and depression. IHMS advised that on two occasions a psychiatrist assessed that ongoing restricted detention and separation from his children is detrimental to his psychological wellbeing, and recommended that he be transferred to the community.

DIBP advised that Mr X had a significant history of suicide attempts and self-harm.

### Other matters

22 May 2015

The Australian Human Rights Commission (AHRC) requested further information from DIBP in relation to the complaint Mr X had previously made to the AHRC. DIBP provided a response on 15 June 2015. AHRC finalised its investigation on 17 December 2015.

17 March 2016

Mr X lodged a complaint with the Ombudsman's office claiming the physiotherapy treatment he was receiving was not in accordance with the recommendation of the specialist.

Following investigation the Ombudsman's office was satisfied that DIBP had responded reasonably to Mr X's complaint and he had been provided with treatment in accordance with the specialist referral. The complaint was closed on 1 July 2016.

### **Ombudsman assessment/recommendation**

Mr X was detained on 29 August 2012 after arriving in Australia aboard SIEV *Imli* and has been held in detention for over 42 months (three and a half years).

The Minister has lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 2 September 2015 Mr X lodged a TPV application.

The Ombudsman notes with concern that DIBP incorrectly advised in its 24-month review dated 23 September 2014 that Mr X had been convicted of common assault against his daughter. This information was included in Ombudsman Report 1001858 which was tabled in Parliament on 17 June 2015.

The Ombudsman notes that Mr X was found guilty of common assault but no conviction was recorded.

The Ombudsman notes the importance of maintaining accurate records for individuals, particularly when these records are used to inform decisions about an individual's detention placement or immigration status.

The Ombudsman recommends that Mr X's immigration records are reviewed to ensure that all information is current and accurate.