

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Mr X who has remained in restricted immigration detention for more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1990
Ombudsman ID	1003210
Date of DIBP's report	12 August 2015
Total days in detention	733 (at date of DIBP's report)

Detention history

9 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 825 <i>Ivatee</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
12 August 2014	Transferred to Facility B.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Mr X is part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A.	
12 March 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ¹

Criminal matters

5 September 2014	A DIBP Incident Report recorded that Mr X was involved in a physical altercation with a group of detainees from another ethnicity at Facility B.
27 November 2014	Mr X was charged for his involvement in a riot. DIBP advised that Mr X was scheduled to appear before the City C Magistrates Court on 13 October 2015.

Health and welfare

29 May 2014	A DIBP Incident Report recorded that Mr X refused food and fluids as a form of protest. No further information was provided.
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¹ 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.

6 March 2015 and 10 March 2015	International Health and Medical Services (IHMS) advised that Mr X attended two specialist counselling sessions. His counsellor noted that he was experiencing symptoms of depression and anxiety.
31 July 2015 – ongoing	Mr X was regularly reviewed by a psychiatrist, however he declined further counselling. He continues to be monitored by the mental health team.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 9 August 2013 after arriving in Australia aboard SIEV *Ivalee* and has been held in restricted detention for over two years with no processing of his protection claims.

The Ombudsman notes with concern the Government’s duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. Without an assessment of Mr X’s claims to determine if he is found to engage Australia’s protection obligations, it appears likely that he will remain in restricted detention for an indefinite period.

The Ombudsman notes the Minister’s recent Statements to Parliament, in which he advises that DIBP is progressing the substantial caseload of maritime arrivals, and will provide him with advice to assist his consideration of whether to lift the bar to allow these people to lodge a Temporary Protection visa application.

The Ombudsman recommends that the Minister lift the bar under s 46A and processing of Mr X’s protection claims commence as soon as possible.