

## 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 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1985
<b>Ombudsman ID</b>	1003157
<b>Date of DIBP's reports</b>	24 July 2015 and 29 January 2016 <sup>1</sup>
<b>Total days in detention</b>	985 (as at 17 March 2016)

### Detention history

6 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 777 <i>Pisgah</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
10 July 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
23 July 2013	Transferred to Scherger IDC.
25 January 2014	Transferred to Curtin IDC.
26 August 2014	Transferred to Yongah Hill IDC.
28 March 2015	Transferred to Christmas Island IDC.
1 October 2015	Transferred to Yongah Hill IDC.

### 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.	
14 August 2013	The former Minister agreed to consider ministerial intervention under s 195A to grant Mr X a Bridging visa. However, DIBP advised that Mr X was not referred on a second stage submission because he was identified as a person of interest following information alleging his involvement in criminal matters overseas.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
6 November 2015	DIBP invited Mr X to apply for a temporary visa.

<sup>1</sup> In response to an inquiry from the Ombudsman's office about an apparent breach of reporting timeframes DIBP advised that it did not meet its statutory obligations in relation to providing Mr X's 24-month and 30-month reviews under s 486N. It further advised that this was due to an information technology error which precluded normal reporting procedures from being followed, and that it is working with DIBP's information technology systems to correct this issue.

1 December 2015	Lodged a Temporary Protection visa (TPV) application.
25 January 2016	Mr X's case was referred on a first stage submission for consideration under ss 195A or 197AB for the grant of a Bridging visa with an associated Temporary Humanitarian Stay visa or community detention placement.
29 January 2016	DIBP advised that Mr X was identified as a person of interest following information alleging that he was involved in criminal matters overseas and he is the subject of an ongoing investigation by the Australian Security Intelligence Organisation.  DIBP further advised that Mr X was identified as being affected by the unintentional release of personal information <sup>2</sup> and advised that the privacy breach would be taken into account when considering his protection claims.

### Health and welfare

10 August 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined specialist counselling.
14 October 2013	Mr X presented with headaches and neck pain which he claimed had been ongoing since an accident four years prior. He was referred for scans and neurological examination and prescribed with pain relief and migraine medication. A magnetic resonance imaging scan and neck x-ray identified no abnormalities.
February 2014	Mr X ceased his migraine medication, reporting that he did not get headaches any more.
28 May 2014 – 17 September 2014	Presented to IHMS on three occasions with sports injuries. He was advised to rest and prescribed with anti-inflammatory medication. In one instance an x-ray was performed with no abnormalities identified.
4 September 2014	Mr X disclosed that he had an active suicide plan and intention to carry it out after his next interview with DIBP.  IHMS advised that during his mental health assessment (date not provided) Mr X appeared to be in a good mood. He guaranteed his safety and agreed to see the mental health team.
28 October 2014 – ongoing	Mr X reported left heel pain. An ultrasound identified plantar fasciitis. He was provided with inserts for his shoes to alleviate his symptoms.
23 November 2014	A DIBP Incident Report recorded that Mr X threatened self-harm because of an accommodation placement.

<sup>2</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.

January 2015	Mr X re-presented complaining of migraines and was prescribed with pain relief medication.  IHMS further advised that Mr X was reviewed by a psychiatrist who reported that he did not have a current mental health disorder.
30 March 2015	A DIBP Incident Report recorded that Mr X called the Australian Red Cross and threatened self-harm.
2 April 2015	Presented to IHMS complaining of shoulder pain. He was prescribed with pain relief medication and referred for an ultrasound.
May 2015	IHMS advised that Mr X was suffering from anger and anxiety as a result of being handcuffed for 12 hours during a transfer. He also reported to be upset about having been moved from Yongah Hill IDC. Mr X was provided with support and encouraged to resume exercising to improve his mental health.
July 2015	An ultrasound of Mr X's shoulder showed inflammation and some nerve impingement. The general practitioner treated him with an anaesthetic injection.
22 July 2015 – 20 December 2015	IHMS advised that Mr X continued to complain of intermittent headaches. His blood pressure was monitored and occasionally found to be elevated.
August 2015	Mr X presented with persisting shoulder pain and was given an exercise program to improve his condition.
11 September 2015	Complained again of shoulder pain and was referred to see an orthopaedic specialist. An appointment is outstanding.
9 November 2015	A DIBP Incident Report recorded that Mr X self-harmed by trying to hang himself, cutting his chest and banging his head. IHMS advised this occurred after Mr X received negative immigration news. He said after having been in detention for 26 months he felt hopeless, helpless and had nothing left to live for. Mr X's injuries were treated and he was placed on Psychological Support Program (PSP) observations.
11 November 2015	Mr X was voluntarily transferred to hospital for an emergency mental health assessment. He was discharged with a finding that he had no depressive or psychotic features which would require admission.  Mr X was reviewed by an IHMS psychiatrist. The psychiatrist reported that his suicidal ideation was connected to his frustrations with his immigration case and he did not have any diagnosable mental health conditions.
13 November 2015	A DIBP Incident Report recorded that Mr X tried to strangle himself with a sheet.
18 November 2015	The Ombudsman's office received an email from Mr X in which he advised that he wanted to kill himself and requested that his body be sent to his mother.
20 November 2015	A DIBP Incident Report recorded that Mr X self-harmed by consuming shampoo and soap.

26 November 2015	A DIBP Incident Report recorded that Mr X self-harmed by cutting his chest and attempting to hang himself with a cord.
14 December 2015	The IHMS psychiatrist advised that Mr X's mental health would benefit from a speedy resolution of his visa situation, to prevent further impulsive suicide attempts and self-harming behaviour.
18 December 2015	Mr X's PSP observations were downgraded to ongoing after he received positive immigration news.

### **Detention incidents**

28 August 2013 – 11 November 2014	DIBP Incident Reports recorded that Mr X was involved in five minor behavioural incidents where he allegedly behaved in an aggressive, inappropriate and threatening manner.
5 August 2015 – 28 September 2015	DIBP Incident Reports recorded that Mr X was the victim of threats, verbal and physical abuse by other detainees on three occasions.

### **Other matters**

4 June 2015	Mr X lodged a complaint with the Ombudsman's office about his classification as a 'high risk' detainee and resulting treatment during his transfer to Christmas Island IDC.  The complaint was investigated and finalised on 21 December 2015.
16 September 2015	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 21 December 2015 DIBP provided a response and on 12 January 2016 responded to AHRC's request for further information. The matter remained ongoing at the time of DIBP's latest review.

### **Ombudsman assessment/recommendation**

Mr X was detained on 6 July 2013 after arriving in Australia aboard SIEV *Pisgah* and has been held in restricted detention for over two and a half years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 1 December 2015 Mr X lodged a TPV application. Mr X's case has also been referred on a ministerial submission for consideration under ss 195A or 197AB.

The Ombudsman notes Mr X's record of suicide attempts and self-harm and the advice from IHMS in December 2015 that Mr X's mental health is being adversely affected by his prolonged detention. The Ombudsman recommends that priority be given to the resolution of Mr X's immigration status and further recommends that his case be expedited for consideration of a Bridging visa or community detention placement while he awaits resolution of his immigration status.

The Ombudsman notes that s 486N(1)(b) records the Secretary of DIBP's obligation to report to the Commonwealth Ombudsman within 21 days after the detention reporting time.

In the case of DIBP's reviews for Mr X, the Ombudsman notes with concern that DIBP advised that it did not meet its statutory reporting timeframes due to an information technology error which precluded normal reporting procedures from being followed.

The Ombudsman further notes that DIBP advised that it is working with DIBP's information technology systems to correct this issue.