

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1983
<b>Ombudsman ID</b>	1003214
<b>Date of DIBP's report</b>	10 August 2015
<b>Total days in detention</b>	730 (at date of DIBP's report)

### Detention history

10 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 828 <i>Lapine</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
12 August 2013	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.

### 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.
1 December 2014	Mr X was charged for his involvement in a riot.
10 December 2014	Appeared before the C Magistrates Court and entered a non-guilty plea. DIBP advised that he was scheduled to appear before the D Magistrates Court on 13 October 2015.

### Health and welfare

August 2013	International Health and Medical Services (IHMS) advised that Mr X reported that he had previously been hospitalised for cardiac failure after experiencing an asthma attack.
25 August 2013 – 29 August 2013	He was admitted to hospital after experiencing an acute asthma attack with symptoms of bronchitis. He was diagnosed with a respiratory disease and prescribed with medication. His general practitioner (GP) consulted with a cardiologist to monitor potential cardiac issues and investigative tests were conducted.

30 September 2013	Mr X presented with symptoms of anxiety and was advised by his GP to practice relaxation exercises. His GP noted that his asthma is exacerbated by his anxiety.  IHMS further advised that Mr X presented with insomnia and was prescribed with medication.
22 October 2013 – ongoing	He was admitted to hospital after presenting with symptoms related to his respiratory condition. He was prescribed with antibiotics and provided with a management plan before being discharged into the care of the IHMS medical team.
12 November 2013	Disclosed a history of torture and trauma. He was referred for counselling on multiple occasions but did not attend.
25 May 2014 – ongoing	IHMS advised that Mr X has threatened self-harm on multiple occasions while in detention. He attended specialist counselling and is regularly monitored by the mental health team.
2 June 2014	A DIBP Incident Report recorded that Mr X refused food and fluids as a form of protest. No further information was provided.
August 2014 – ongoing	Attended a review with a psychiatrist and was diagnosed with chronic depression and an adjustment disorder. He was prescribed with medication and attends cognitive behavioural therapy.

#### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 10 August 2013 after arriving in Australia aboard SIEV *Lapine* 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.