

**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 a cumulative period of more than 36 months (three years).

Name	Mr X
Citizenship	Country A
Year of birth	1970
Ombudsman ID	1002421
Date of DIBP's reports	17 April 2015, 13 October 2015 and 14 April 2016
Total days in detention	1096 (at date of DIBP's latest report)

Detention history

17 October 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 485 <i>Opaque</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
24 October 2012	Transferred to Christmas Island Immigration Detention Centre (IDC).
2 November 2012	Transferred to Curtin IDC.
13 December 2012	Granted a Bridging visa and released from detention.
10 June 2013	Re-detained under s 189(1) and transferred to Perth IDC.
13 June 2013	Transferred to Villawood IDC.
6 April 2014	Transferred to Facility C.

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.	
13 December 2012	The former Minister agreed to intervene under s 195A to grant Mr X a Bridging visa and he was released from detention.
10 June 2013	Mr X was issued with a Notice of Intention to Consider Cancellation under s 116 due to character concerns. On the same day his Bridging visa was cancelled and he was re-detained under s 189.
12 June 2013	Mr X requested voluntary removal. On 18 June 2013 he withdrew his request for voluntary removal.
4 July 2013	Appealed the cancellation of his Bridging visa to the Migration Review Tribunal (MRT).
12 July 2013	MRT declined Mr X's application as he had applied for review outside the relevant time limit.

9 October 2013	Found not to meet the guidelines for referral to the former Minister under s 195A.
13 March 2014	DIBP notified Mr X of the unintentional release of personal information ¹ and advised that the privacy breach would be taken into account when considering his protection claims.
11 February 2015	Referred on a ministerial intervention submission under s 195A. On 16 February 2015 the Minister declined to intervene.
30 June 2015	The Minister intervened under s 46A and lifted the bar to allow Mr X to make a temporary visa application.
31 August 2015	Referred on a ministerial intervention submission under ss 195A and 197AB to be considered for the grant of a Bridging visa or a transfer to community detention.
21 September 2015	Mr X lodged an application for a Safe Haven Enterprise Visa (SHEV) which triggered an associated Bridging visa application.
13 October 2015	DIBP advised that following a Five Country Conference check Mr X was found to be a finger print match with Country B and has several criminal convictions against him for which he served time in a correctional facility. Consequently DIBP identified him as a person of interest.
28 October 2015	Associated Bridging visa application deemed invalid.
11 December 2015	Attended an interview in relation to his SHEV application.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has significant mental health issues. At his induction health assessment he disclosed a history of torture and trauma and in October 2014 he was diagnosed with major depression. Mr X was prescribed with antidepressant medication and provided with ongoing specialist and psychological counselling.

Between June and August 2015 IHMS advised that Mr X engaged in long term food and fluid refusal in response to the stress of his ongoing detention. During this period he required multiple admissions to a hospital psychiatric unit for rehydration and treatment of major depressive disorder.

On 18 August 2015 Mr X was discharged from Hospital D with a recommendation that he be transferred to the community for the benefit of his mental health. On 21 September 2015 IHMS advised that Mr X's psychiatrist was in full agreement with Hospital D's recommendation and in October 2015 IHMS recorded that Mr X was experiencing ongoing low mood as a result of his prolonged detention. On 29 February 2016 IHMS reiterated the psychiatrist's assessment, concurring with Hospital D, that Mr X should be transferred to the community for the benefit of his mental health.

IHMS further advised that Mr X was diagnosed with bilateral hearing loss and provided with a hearing aid. He also received physiotherapy and pain relief medication for ongoing shoulder pain.

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.

Other matters

<p>31 December 2014</p>	<p>Mr X's advocate lodged a complaint on his behalf with the Ombudsman's office about the management of Mr X's immigration case and treatment of his mental health problems while located at Facility C. The advocate later lodged a separate complaint concerning the management of Mr X's immigration case.</p> <p>Following an investigation the Ombudsman's office was satisfied that DIBP and IHMS were aware of Mr X's mental health issues, there was evidence that his mental health was being monitored by IHMS, and that services were available to him should he choose to access them. The Ombudsman's office advised Mr X's advocate that it could not comment on clinical decisions made by IHMS.</p> <p>The complaint was finalised on 12 September 2015.</p>
<p>23 February 2015</p>	<p>Mr X's advocate lodged a second complaint to the Ombudsman's office about incorrect representation of Mr X's criminal history by DIBP in a submission to the Minister for Immigration and Border Protection.</p> <p>Following an investigation the Ombudsman's office concluded that DIBP had received and acted on the criminal history information provided by Mr X and his advocate and that it was satisfied the information provided by Mr X concerning his criminal history in the Country B was accurately represented in DIBP's records. The Ombudsman's office advised the advocate that it could not comment on whether the information had been noted by the Minister.</p> <p>The complaint was finalised on 19 May 2015.</p>
<p>13 March 2015</p>	<p>The Australian Human Rights Commission (AHRC) notified DIBP that Mr X had lodged a complaint. On 8 May 2015 DIBP provided a response to AHRC. On 19 May 2015 AHRC finalised its investigation of Mr X's complaint.</p>
<p>3 December 2015</p>	<p>Mr X's advocate spoke with Ombudsman staff by telephone and reiterated the concerns she had raised in the complaint she lodged in December 2014. The advocate advised that she and many people in the community are worried about Mr X's health, particularly his mental health, and she is very concerned that he may die in detention.</p>

Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances in person with Ombudsman staff on 3 September 2015, but declined to do so.

During a telephone conversation with Ombudsman staff on 7 December 2015 Mr X explained that he was previously living in the community on a Bridging visa but was re-detained because DIBP staff believe he has a criminal history in Country B. Mr X said that his friend helped him hire a lawyer in the Country B, who finalised the open cases relating to criminal charges against him and all charges were dismissed and the cases closed. He said that all this information has since been provided to DIBP so he cannot understand why he is still in detention.

Mr X said that since he has been in restricted detention his mental health has deteriorated and he has been hospitalised and requires daily medication. He expressed concern that he may suffer a heart attack because of the incidents he has witnessed or been exposed to while in restricted detention. He said that it is very stressful not knowing how long it will take for an outcome on his visa application and this situation is made worse because of detention conditions.

Mr X said that since he was discharged from hospital he has no major concerns about the treatment and care he receives from IHMS. He said that the psychiatrist has told him that he has sent a letter to DIBP recommending that he be transferred to the community and the hospital discharge letter also recommended this.

He said that he cannot return to Country A because of his personal history. He would like to be released into the community again and has a lot of people who are willing to support him.

Ombudsman assessment/recommendation

Mr X was detained on 17 October 2012 after arriving in Australia aboard SIEV *Opaque* and has been held in restricted detention for a cumulative period of over three years.

On 30 June 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 21 September 2015 Mr X lodged a SHEV application.

The Ombudsman notes with concern that Mr X has serious ongoing mental health concerns and notes the recommendations by Hospital D in August 2015 and the IHMS psychiatrist in September 2015 and February 2016 that Mr X be transferred to the community for the sake of his mental health.

The Ombudsman notes that as of 14 April 2016 Mr X was still awaiting the outcome of his SHEV application. In light of Mr X's mental health concerns, the Ombudsman recommends he be granted a Bridging visa or transferred to community detention while awaiting the outcome of his SHEV application.