

## 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 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1985
<b>Ombudsman ID</b>	1003447
<b>Date of DIBP's report</b>	23 September 2015
<b>Total days in detention</b>	732 (at date of DIBP's report)

### Detention history

19 December 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 567 <i>Tornax</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
20 February 2013	Transferred to Wickham Point Immigration Detention Centre (IDC).
2 April 2013	Transferred to Yongah Hill IDC.
21 May 2013	Granted a Bridging Visa valid until 21 November 2013 and released from detention.
21 February 2014	Mr X remained in the community as an unlawful non-citizen until he was re-detained under s 189(1) and transferred to Northern IDC.
28 February 2014	Transferred to Christmas Island IDC.

### 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.

### Health and welfare

4 February 2013	International Health and Medical Services (IHMS) recorded that Mr X was identified as a tuberculosis contact. Chest x-rays identified no abnormalities.
26 February 2014	Mr X disclosed a history of torture and trauma but declined specialist counselling.

21 April 2015 – ongoing	Presented to his general practitioner (GP) with a small cyst on his thumb which was diagnosed as a potential ganglion. He was referred to a specialist for an ultrasound and x-ray. Mr X declined to attend these appointments, stating that DIBP's policy that he would be handcuffed for the transfer would make him very anxious. He was provided with education about the possible health implications if he did not address this issue.
22 July 2015 – ongoing	Mr X reported to his GP that he was distressed about a number of situations including the requirement to wear handcuffs during transfers and an altercation with another detainee. Mr X accepted a referral for specialist counselling and at the time of the report from IHMS, Mr X was awaiting an appointment. IHMS further advised that Mr X had regularly accessed assistance from the mental health team since this time.

### Other matters

24 July 2014	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 28 October 2014 DIBP provided a response to the AHRC. Mr X withdrew his complaint on 20 February 2015 and the matter was closed.
18 February 2014	DIBP advised that Mr X was identified as a person of interest following information alleging that he had committed serious criminal offences offshore.

### Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 19 December 2012 after arriving in Australia aboard SIEV *Tornax* and has been held in detention for a cumulative period of over two years with no processing of his protection claims.

The Ombudsman notes with concern that 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.