

## 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 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>	1003184
<b>Date of DIBP's report</b>	12 August 2015
<b>Total days in detention</b>	740 (at date of DIBP's report)

### Detention history

16 April 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 633 <i>Maidstone</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
18 April 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
18 May 2013	Transferred to Yongah Hill IDC.
9 July 2013	Granted a Bridging visa with an associated Temporary Humanitarian Stay (THS) visa and released from detention.
24 October 2013	Mr X was re-detained under s 189(1). He was transferred to Facility B following criminal charges.
3 April 2014	Transferred to Facility C.
28 August 2014	Transferred to Facility D.
29 August 2014	Transferred to Facility E.

### 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.	
9 July 2013	Granted a Bridging visa with an associated THS visa.
24 October 2013	Mr X's Bridging visa was cancelled under s 116.
26 May 2015	Found not to meet the guidelines for referral to the Minister under s 195A.

### Criminal history

17 September 2013	Mr X was charged with shoplifting.
28 October 2013	He was convicted of shoplifting and fined \$500.

## Health and welfare

10 May 2013	A DIBP Incident Report recorded that Mr X threatened self-harm. No further information was provided.
November 2013	International Health and Medical Services (IHMS) advised that Mr X was reviewed by a psychiatrist following ongoing agitated, aggressive and anti-social behaviour.
15 November 2013	IHMS advised that Mr X was transferred to hospital following an attempted suicide. No further information was provided.
18 November 2013	A DIBP Incident Report recorded that Mr X threatened self-harm. No further information was provided.
8 January 2014	Disclosed a history of torture and trauma and attended psychological counselling.
11 August 2014 and 12 November 2014	DIBP Incident Reports recorded that Mr X threatened self-harm during two appointments with his case manager.
October 2014	Reviewed by a psychiatrist who noted that Mr X appeared well-adjusted and was coping well despite his situation and recommended that Mr X be transferred to community detention.
22 December 2014	DIBP Incident Reports recorded that Mr X had self-harmed. No further information was provided.
5 January 2015	Presented to his general practitioner with ongoing discomfort relating to a previous injury. An x-ray was conducted which confirmed that a foreign body was lodged in Mr X's thumb. He was referred to a plastic surgeon for review.

## Detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous behavioural incidents while in detention, including displaying abusive and aggressive behaviour towards detention centre staff and other detainees, threatening detention centre staff, physically assaulting other detainees causing injury and possession of contraband.	
27 January 2014	DIBP Incident Reports recorded that two male detainees alleged that Mr X had approached them and requested sexual favours. DIBP advised that the two detainees requested to be transferred to another detention compound and were placed under observation.
10 February 2014	A DIBP Incident Report recorded that Mr X allegedly assaulted another detainee by punching and kneeling him. The incident was referred to the Australian Federal Police (AFP) for further investigation. DIBP advised that on 28 February 2014 the AFP advised that they would not be investigating the matter further.
30 July 2014	DIBP advised that Mr X allegedly assaulted another detainee and the incident was referred to the AFP for investigation. On 17 September 2014 the AFP advised that they would not be investigating the matter further.

7 May 2015	DIBP Incident Reports recorded that Mr X allegedly sexually assaulted and harassed another male detainee. DIBP advised that the incident was referred to the AFP and Mr X was transferred to an alternative compound. On 14 May 2015 the complainant retracted the allegation and signed a withdrawal complaint form. This matter is now closed.
------------	--

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 16 April 2013 after arriving in Australia aboard SIEV *Maidstone* and has been held in restricted detention for a cumulative period of 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.