

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

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1975
<b>Ombudsman ID</b>	1002383-O
<b>Date of DIBP's reports</b>	28 April 2016 and 27 October 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

14 April 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel 648 <i>Weinem</i> . He was transferred to Northern Immigration Detention Centre (IDC).
30 April 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>
25 July 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin IDC.
26 July 2013	Transferred to Yongah Hill IDC.
25 February 2015	Granted a Bridging visa and released from detention.
16 December 2015	Re-detained and transferred to Facility B.
24 December 2015	Transferred to Facility C.

### Visa applications/case progression

Mr X arrived in Australia by sea between 13 August 2012 and 19 July 2013. He was transferred to an RPC and subsequently returned to immigration detention in Australia. Prior to being classified as a 'fast track' applicant, Mr X was part of a cohort who were unable to have their protection claims assessed as they were subject to bars under ss 46A and 46B.	
20 February 2015	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.
24 February 2015	The Minister intervened under s 195A and on 25 February 2016 Mr X was granted a Bridging visa valid until 25 February 2016.
16 December 2015	Mr X's Bridging visa was cancelled under s 116 and on the same day he was re-detained.

<sup>1</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

10 March 2016	Appealed to the Administrative Appeals Tribunal against the decision to cancel his Bridging visa.
21 March 2016	The AAT set aside the decision to cancel the Bridging visa and substituted a decision to reinstate the visa. However, as it had expired by this time, Mr X was deemed to be an unlawful citizen and continued to be detained under s 189(1).
18 April 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
26 April 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He accepted the offer on 5 May 2016.
28 April 2016	The Minister indicated he was not inclined to consider Mr X under s 195A.
15 September 2016	Lodged a Safe Haven Enterprise visa (SHEV) application. On 27 October 2016 DIBP advised that processing of the application remained ongoing.

#### **Other legal matters**

16 December 2015	Mr X was held by police during a field investigation at an alleged hydroponic factory. On 28 April 2016 DIBP advised that the police had indicated they did not intend to charge Mr X.
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#### **Health and welfare**

International Health and Medical Services advised that Mr X disclosed a history of torture and trauma in December 2015 but declined a referral to a specialised counselling service. He was followed up for counselling from the mental health team as required.

#### **Ombudsman's assessment/recommendation**

Mr X was detained on 14 April 2013 after arriving in Australia by sea and has been held in restricted detention for more than two and a half years.

On 18 April 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 15 September 2016 Mr X lodged an application for a SHEV.

The Ombudsman notes DIBP's advice that the police indicated they did not intend to charge Mr X in relation to his being found at the site of a drug-related field investigation on 16 December 2015. The Ombudsman notes that his case was last put forward for possible ministerial consideration for a Bridging visa in April 2016 with the Minister indicating he was not inclined to consider the matter.

The Ombudsman further notes that Mr X does not appear to have been involved in any behavioural incidents while in detention and recommends that he now be considered for a Bridging visa.