

## 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>	1980
<b>Ombudsman ID</b>	1003178
<b>Date of DIBP's reports</b>	6 August 2015 and 25 January 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

1 April 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 635 <i>Jeep</i> with his wife, Ms Y and their children. <sup>1</sup> He was transferred with his family to Facility B.
9 April 2013	Transferred with his family to Facility C.
28 April 2013	Transferred with his family to Facility D.
20 May 2013	Transferred with his family to Facility E.
13 June 2013	Mr X and his family were granted Bridging visas and released from detention.
8 October 2013	Mr X's Bridging visa was cancelled. He was re-detained under s 189(1) and transferred to Facility F. The Department of Immigration and Border Protection (DIBP) advised that Mr X's family remain in the community on Bridging visas.
28 May 2015	Transferred to Facility C.
1 October 2015	Transferred to Facility G.

### Visa applications/case progression

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.	
7 June 2013	Mr X and his family's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.
10 June 2013	The former Minister agreed to intervene under s 195A.
13 June 2013	Mr X and his family were granted Bridging visas.

<sup>1</sup> Ms Y and her three children have been in detention for less than 24 months and are not subject to reporting under s 486N.

8 October 2013	Mr X's Bridging visa was cancelled under s 116 following criminal charges.
11 February 2014	Mr X requested voluntary removal to Country A for himself and his family.
6 March 2014	Withdrew the request for voluntary removal.
1 July 2014	Found not to meet the guidelines for referral to the former Minister under s 195A.
3 July 2014	Mr X's case was reassessed and found to meet the guidelines for referral to the former Minister under s 195A.
26 September 2014	Mr X was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.
24 October 2014	The former Minister declined to intervene.
21 July 2015	Mr X's case was found not to meet the guidelines for referral to the Minister under s 195A.

### **Criminal history**

28 September 2013	Mr X was accused of Crime H.
8 October 2013	Police charged Mr X with Crime H.
3 March 2014	Mr X pleaded guilty and was sentenced to three months imprisonment, wholly suspended for 12 months.

### **Health and welfare**

21 April 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma. He declined specialist counselling.
8 October 2013	A DIBP Incident Report recorded that Mr X threatened self-harm when he was re-detained.
6 November 2013	An IHMS psychiatrist noted that Mr X appeared to be depressed due to situational factors. He was prescribed with antidepressant medication and it was recommended that ongoing mental health reviews be provided.
10 December 2013	A DIBP Incident Report recorded that Mr X presented to IHMS with chest pains and was taken to hospital by ambulance.
December 2014	Referred to a specialist counselling service following reports of frequent nightmares. However, IHMS stated that there was no documentation to confirm that he had attended any appointments.
15 December 2014	Mr X was taken to a hospital by ambulance following symptoms of chest pain, palpitations and dizziness. No abnormalities were detected and he was discharged.
10 September 2015	A general practitioner diagnosed Mr X with an adjustment disorder.

22 December 2015	IHMS advised that Mr X continued contact with the mental health team and self-referred to group and individual counselling sessions.
20 January 2016	A DIBP Incident Report recorded that Mr X threatened to kill himself during an appointment with IHMS.

### Other matters

3 June 2015	<p>Mr X lodged a complaint with the Ombudsman's office about his transfer from Facility F to Facility C without the opportunity to tell his family. He advised that his family live in City I and that the separation had exacerbated his son's epilepsy.</p> <p>Following an investigation on 16 February 2016 the Ombudsman's office suggested that DIBP consider transferring Mr X back to City I so he could be closer to his family.</p> <p>The complaint was finalised on 22 March 2016.</p>
-------------	--

### Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 1 April 2013 after arriving in Australia aboard SIEV *Jeep* and has been held in restricted detention for a cumulative period of over two and a half 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 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.

The Ombudsman notes that Mr X is currently detained at Facility G, while his family are living in the community in another state in City I.

The Ombudsman notes the impact of separation on Mr X's health and on his family and recommends that Mr X be considered for transfer to City I.