

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).

Name	Mr X
Citizenship	Country A
Year of birth	1980
Ombudsman ID	1003492
Date of DIBP's report	6 October 2015
Total days in detention	732 (at date of DIBP's report)

Detention history

17 March 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 601 <i>Biscayne</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
21 March 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
4 April 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
22 October 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Northern IDC.
25 October 2013	Transferred to Wickham Point APOD and reunited with his wife, Ms Y, who is the subject of Ombudsman report 1003480. ²
24 June 2014	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.

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.	
14 March 2014	DIBP notified Mr X of the unintentional release of personal information ³ and advised that the privacy breach would be taken into account when considering his protection claims.

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

² Ms Y arrived on the Australian mainland aboard SIEV 640 *Outback* on 8 April 2013.

³ 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.

30 September 2015	Found not to meet the guidelines for referral to the Minister under s 195A.
24 February 2016	DIBP advised that Mr X and Ms Y have separate immigration pathways but will be assessed for placement together. It further advised that the family ⁴ was being considered for referral to the Minister under s 197AB for consideration of a community detention placement.
10 March 2016	DIBP confirmed that detainees who arrived in Australia prior to 19 July 2013 who were transferred to an RPC and subsequently returned to immigration detention in Australia are subject to an additional bar under s 46B. DIBP further advised that these people cannot have the s 46B bar lifted to allow them to apply for a temporary visa until a legislative instrument is introduced to bring them within the 'fast track' protection assessment process.

Criminal matters

7 July 2013	DIBP advised that Mr X was charged with fighting while at Manus Island RPC. The matter was heard by the local court. He was cautioned and discharged on 14 September 2013.
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Health and welfare

International Health and Medical Services advised that Mr X has not required treatment for any major physical or mental health issues.

Ombudsman assessment/recommendation

<p>Mr X was detained on 17 March 2013 after arriving in Australia aboard SIEV <i>Biscayne</i> and has been held in restricted detention for a cumulative period of over two years with no processing of his protection claims.</p> <p>The Ombudsman notes that, at the time of DIBP's review, Mr X was subject to the bar under s 46A and processing of his claims for protection had not commenced.</p> <p>The Ombudsman notes DIBP's advice that because Mr X spent a period of time in an RPC before being transferred back to Australia, he is subject to an additional bar under s 46B. DIBP has further advised that until a legislative instrument is introduced to lift this bar, Mr X will not be invited to apply for protection.</p> <p>The Ombudsman recommends that priority is given to resolving Mr X's status to allow him to apply for a temporary visa.</p> <p>The Ombudsman further notes DIBP's advice on 24 February 2016 that Mr X and his family are being considered for referral to the Minister under s 197AB for consideration of a community detention placement. The Ombudsman recommends that this process be expedited and the family be considered for a community detention placement as soon as possible.</p>

⁴ Master Z was born in Australia in April 2015. He has been in detention for less than two years and is not subject to reporting under s 486N.