

## 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 more than 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1984
<b>Ombudsman ID</b>	1002775
<b>Date of DIBP's report</b>	19 June 2015
<b>Total days in detention</b>	736 (at date of DIBP's report)

### Detention history

13 June 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 747 <i>Harvest</i> .
The Department of Immigration and Border Protection (DIBP) advised that Mr X is currently located at Facility B.	

### 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.	
---	--

### Criminal matters

5 September 2014	A DIBP Incident Report recorded that Mr X was involved in a physical altercation with detainees of a different ethnicity at Facility B. He was charged with participating in a riot and was scheduled to appear before the City C Magistrates Court on 7 July 2015. No further information was provided.
------------------	--

### Health and welfare

31 January 2013	International Health and Medical Services (IHMS) advised that Mr X presented to his general practitioner (GP) with ongoing pain related to a previous back injury. An x-ray identified no abnormalities. He was provided with pain relief medication and advised to practice back exercises.
3 June 2013 – ongoing	Mr X reported that he had received treatment for hepatitis B prior to his arrival in Australia. Routine pathology testing confirmed Mr X's previous infection and identified abnormal liver function. He was provided with education and reviewed by a hepatologist. IHMS advised that Mr X attended regular follow-up scans and pathology testing with no abnormalities identified. His condition continues to be monitored by his GP.

8 August 2013 – ongoing	Disclosed a history of torture and trauma and accepted a referral for specialist counselling. However, IHMS advised that he was relocated before he could attend. His mental health continues to be regularly reviewed by the mental health team.
10 January 2014	A DIBP Incident Report recorded that Mr X threatened self-harm. No further information was provided.
9 September 2014	Mr X was diagnosed with a medical condition during a consultation with his GP. He was prescribed with medication and referred to a surgeon for assessment. IHMS advised that this appointment remained outstanding at the time of its report.
November 2014	Presented to his GP with ongoing pain and limited mobility in his arm following a previous injury. He was referred for an x-ray.
December 2014	An arm x-ray was conducted with no abnormalities identified. He was advised to avoid aggravating activities and no further treatment was required.
March 2015	During a mental health assessment Mr X disclosed that he was experiencing stress related to his legal issues.
22 June 2015	Presented to his GP with ongoing shin pain following a sporting injury. An x-ray identified no abnormalities and he was diagnosed with a skin condition. He was provided with antibiotic medication.

#### **Other matters**

17 March 2014	<p>Mr X lodged a complaint with the Ombudsman's office in relation to property which he alleged had not been returned to him following his transfer between detention facilities.</p> <p>Following an investigation by the Ombudsman's office, DIBP advised that it had reviewed the procedures surrounding the transfer of property and would provide better training to detention centre staff. DIBP further advised that Mr X had been informed of his rights to apply for compensation for the misplaced property.</p> <p>On 13 February 2015 the Ombudsman's office finalised the complaint.</p>
---------------	---

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 13 June 2015 after arriving in Australia aboard SIEV *Harvest* and has been held in restricted detention for 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.