

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).

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1003171
Date of DIBP's report	27 July 2015
Total days in detention	732 (at date of DIBP's report)

Detention history

25 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 808 <i>Kinston</i> . He was transferred to Facility B.
29 July 2013	Transferred to Facility C.
12 June 2015	Transferred to Facility D.

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.	
12 March 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ¹

Criminal history

20 September 2014	DIBP Incident Reports recorded that Mr X became aggressive and allegedly assaulted two Serco officers with a steel pole that he had removed from a stretcher bed. DIBP advised that use of force was required to restrain Mr X and the Australian Federal Police were notified.
13 May 2015	DIBP advised that Mr X was convicted of two counts of assault against Serco officers. He was placed on a six-month conditional release order.

¹ 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.

Health and welfare

4 August 2013 – ongoing	International Health and Medical Services (IHMS) advised that during his induction health assessment Mr X reported that he was an epileptic. He was prescribed with medication to manage his symptoms, however IHMS reported that Mr X was not compliant in consistently taking this medication. This has resulted in Mr X experiencing seizures following stressful or emotional events. IHMS further advised that Mr X had a history of violent behaviour towards other people and himself.
15 January 2014	A DIBP Incident Report recorded that Mr X refused food and fluids as a form of protest. No further information was provided.
29 April 2014 – 6 July 2015	Mr X was admitted to hospital on seven occasions for review and treatment following epileptic seizures.
7 June 2014 – 12 June 2014	DIBP Incident Reports recorded that Mr X threatened self-harm on three occasions.
5 July 2014	An abdominal ultrasound identified liver abnormalities. Mr X was advised to attend yearly reviews to monitor his condition.
14 July 2014 and 24 September 2014	DIBP Incident Reports recorded that Mr X allegedly self-harmed by cutting himself with a razor blade. No further information was provided.
26 September 2014 – ongoing	Mr X was reviewed by a psychiatrist who noted that he presented with symptoms of depression and anxiety including anger, volatility and impulsiveness. The psychiatrist further noted that Mr X experiences limited cognitive ability, rigid personality and fixed thinking, especially in relation to his epilepsy and anger management issues. His mental health continues to be monitored by the psychiatrist and the mental health team.
26 October 2014	Mr X was diagnosed with post-traumatic stress disorder after presenting with anxiety related to his involvement in a vehicle accident. He was referred for specialist counselling.
31 October 2014	A DIBP Incident Report recorded that Mr X threatened self-harm. No further information was provided.
5 December 2014 – 6 December 2014	DIBP Incident Reports recorded that Mr X refused food and fluids as a form of protest and was placed under observation. No further information was provided.
7 December 2014 and 6 January 2015	DIBP Incident Reports recorded that Mr X allegedly self-harmed by hitting his head against a wall. No further information was provided.
January 2015	IHMS advised that Mr X was reported to be hoarding his prescription medication.
25 March 2015	An electroencephalogram (EEG) was conducted following an appointment with a neurologist. The EEG identified no abnormalities and he was referred for a magnetic resonance imaging scan.
5 May 2015	Mr X disclosed that he was experiencing anxiety related to his legal issues during a review with his psychiatrist. His psychiatrist noted improvements in his mental health.

Detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous behavioural incidents, including displaying abusive and aggressive behaviour towards detention centre staff and other detainees, threatening detention centre staff, assaulting detention centre staff and detainees and damaging property.	
20 August 2014	A DIBP Incident Report recorded that Mr X allegedly assaulted a Serco officer. No further information was provided.
22 November 2014	DIBP Incident Reports recorded that Mr X was allegedly abusive towards detention centre staff and caused damage to medical equipment. DIBP advised that use of force was required to restrain Mr X from causing further damage.
23 November 2014	DIBP Incident Reports recorded that Mr X was removed from IHMS facilities after becoming abusive and aggressive towards medical staff.
4 December 2014	DIBP Incident Reports recorded that use of force was required to restrain Mr X after he allegedly assaulted a Serco officer. No further information was provided.
7 December 2014	A DIBP Incident Report recorded that Mr X allegedly attempted to headbutt a Serco officer. No further information was provided.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 25 July 2013 after arriving in Australia aboard SIEV *Kinston* and has been held in restricted detention for over two years with no processing of his protection claims.

The Ombudsman notes that on 13 May 2015 Mr X was convicted of assault against two Serco officers and was placed on a six-month conditional release order, due to expire in November 2015.

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.