

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	1980
Ombudsman ID	1003172
Date of DIBP's report	25 July 2015
Total days in detention	730 (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 an Alternative Place of Detention, Christmas Island.
29 July 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
2 July 2014	Transferred to Wickham Point IDC.
9 January 2015	Transferred to Facility B.

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.	
25 July 2015	Mr X was considered for inclusion in a submission to the Minister under s 195A following ongoing concerns for his mental health.

Health and welfare

19 November 2013 – ongoing	International Health and Medical Services (IHMS) advised that Mr X has received treatment for chronic tonsillitis and is prescribed with medication as required.
10 January 2014	Reviewed by his general practitioner (GP) who noted that he was experiencing symptoms of depression and anxiety as a result of his prolonged detention. Mr X was intermittently prescribed with antidepressant medication and attended specialist counselling. His mental health continues to be monitored by a psychologist and his GP.
13 January 2014	A DIBP Incident Report recorded that Mr X refused food and fluids as a form of protest. No further information was provided.

May 2014	Referred to an ear, nose and throat (ENT) specialist following chronic tonsillitis infections.
2 June 2014	A DIBP Incident Report recorded that Mr X refused food and fluids as a form of protest. No further information was provided.
10 July 2014	Reviewed by an ENT specialist who recommended that Mr X undergo a surgical procedure to remove his tonsils. IHMS could not confirm whether Mr X had been placed on a hospital waiting list at the time of its report.
July 2014 – July 2015	Transferred to a hospital emergency department on nine occasions for treatment of a previous leg injury.
August 2014	Presented with pain and limited movement in his shoulder. An x-ray and ultrasound were conducted and Mr X was diagnosed with a partial muscle tear and inflammation. He was prescribed with medication and referred for physiotherapy.
22 September 2014	Reviewed by an orthopaedic specialist following ongoing leg pain. It was recommended that Mr X undergo a surgical procedure to remove the screws fitted during his previous surgery.
30 September 2014 – 24 February 2015	Attended 22 physiotherapy sessions for treatment of shoulder pain.
1 July 2015	Mr X was admitted to hospital for leg surgery. IHMS advised that he received post-operative care and education and was prescribed with pain relief medication. He was scheduled to attend a follow-up appointment with the hospital orthopaedic clinic in October 2015.

Detention incidents

22 December 2014	A DIBP Incident Report recorded that Mr X allegedly assaulted a detainee by hitting them in the face. No further information was provided.
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Other matters

16 April 2014	<p>Mr X lodged a complaint with Ombudsman staff at Christmas Island IDC alleging that he was receiving inadequate health care for his chronic tonsillitis.</p> <p>Following an investigation by the Ombudsman's office, DIBP advised that Mr X had been referred to a specialist in January 2014 and placed on the public waiting list. IHMS advised that he was reviewed by an ENT specialist on 10 July 2014.</p> <p>On 14 August 2014 the Ombudsman's office finalised the complaint after being satisfied that Mr X was receiving care consistent with community standards.</p>
11 March 2015	DIBP was notified by the Northern Territory Police that it would not be further investigating an alleged assault. No further information was provided.
15 May 2015	DIBP advised that Mr X had previously been considered a person of interest to its National Security and Serious Reporting Team following a suspected identity match. However, this match was later considered void.

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 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.