

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 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	1981
Ombudsman ID	1003496
Date of DIBP's report	9 October 2015
Total days in detention	730 (as at 16 October 2015)

Detention history

30 May 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 726 <i>Jarrow</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
4 June 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
14 June 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
30 October 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin IDC.
1 November 2013	Transferred to Yongah Hill IDC.
9 January 2014	Transferred to Christmas Island IDC.
19 November 2014	Transferred to Wickham Point APOD.
15 December 2015	Granted a Bridging visa and released from detention.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to being released from detention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister had not lifted the bar under s 46A.	
12 March 2014	DIBP notified Mr X of the unintentional release of personal information ² 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 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.

9 October 2015	DIBP advised that Mr X's case was being assessed against the guidelines for referral to the Minister under s 195A.
15 December 2015	Granted a Bridging visa.
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.

Health and welfare

International Health and Medical Services provided details of Mr X's health and welfare. No significant ongoing physical or mental health concerns were noted.

Detention incidents

2 January 2014	A DIBP Incident Report recorded that Mr X attempted to escape from Yongah Hill IDC. Unplanned use of force was used by Serco officers to prevent his escape.
13 May 2014 – 4 December 2014	DIBP Incident Reports recorded that Mr X was aggressive towards IHMS staff and Serco officers on four occasions.

Ombudsman assessment/recommendation

Mr X was granted a Bridging visa on 15 December 2015 and released from immigration detention.

The Ombudsman notes that Mr X was detained on 30 May 2013 after arriving in Australia aboard SIEV *Jarrow* and was held in detention for a cumulative period of over two years before being granted a Bridging visa. The Ombudsman further notes that, at the time of DIBP's review, processing of Mr X's claims for protection had not commenced.

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.

The Ombudsman recommends that priority is given to resolving Mr X's status to allow him to apply for a temporary visa.