

## 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 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1988
<b>Ombudsman ID</b>	1002920
<b>Date of DIBP's report</b>	16 July 2015 and 5 January 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest 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 Phosphate Hill 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). <sup>1</sup>
25 July 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin IDC.
26 July 2013	Transferred to Yongah Hill IDC.
21 January 2014	Mr X absconded from Yongah Hill IDC. On the same day, he was located by authorities and re-detained under s 189(1).
25 January 2014	Transferred to Christmas Island IDC.
5 March 2015	Transferred to Wickham Point APOD. <sup>2</sup>
19 September 2015	Transferred to Christmas Island IDC.
3 February 2016	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.

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

<sup>2</sup> Wickham Point was designated an APOD on 11 July 2013. DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point APOD is comprised of three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X was accommodated in the single adult male compound at Wickham Point APOD.

23 December 2013 and 11 February 2014	Mr X requested voluntary removal from Australia, however on 21 March 2014 he withdrew his requests for voluntary removal.
22 October 2015	Mr X's case was referred on a first stage ministerial submission for consideration under s 195A for the grant of a Bridging visa.
11 November 2015	The Minister agreed to consider intervening under s 195A. DIBP confirmed that detainees transferred to an RPC who have been 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' definition to have their protection claims processed.
5 January 2016	DIBP advised that the Australian Federal Police were investigating Mr X's involvement in a riot that occurred at Christmas Island IDC. DIBP further advised that following the completion of this investigation, Mr X may be referred on a ministerial submission under s 195A for the grant of a Bridging visa.
3 February 2016	Granted a Bridging visa.

### Health and welfare

International Health and Medical Services (IHMS) provided details of Mr X's health and welfare. No significant ongoing physical health concerns were noted.	
30 August 2013	Disclosed a history of torture and trauma but declined specialist counselling.
24 November 2015	Mr X presented with symptoms of insomnia and stress during a consultation with a general practitioner (GP). He was provided with counselling and prescribed with medication.
25 November 2015	Mr X attended a consultation with his GP and declined a referral for specialist counselling. IHMS reported that he was advised to self-refer as required.

### Detention incidents

21 January 2014	DIBP Incident Reports recorded that Mr X absconded from Yongah Hill IDC with three other detainees by jumping over two internal perimeter fences and an electric fence. Mr X was located by Serco officers and the Western Australia Police on the same day and re-detained under s 189(1). DIBP advised that no further action was taken and the matter was closed.
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### **Ombudsman assessment/recommendation**

Mr X was granted a Bridging visa on 3 February 2016 and released from immigration detention.

The Ombudsman notes that Mr X was detained on 17 March 2013 after arriving in Australia aboard SIEV *Biscayne* and was held in detention for over two and a half 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.