

# 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, born in Country B
<b>Year of birth</b>	1978
<b>Ombudsman ID</b>	1002772
<b>Date of DIBP's report</b>	1 July 2015 <sup>1</sup>
<b>Total days in detention</b>	756 (at date of DIBP's report)

## Detention history

5 June 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 735 <i>Tiverton</i> . He was transferred to Phosphate Hill Alternative Place of Detention (APOD), Christmas Island.
24 June 2013	Transferred to Construction Camp APOD.
29 June 2013	Transferred to Facility C.
15 November 2013	Transferred to Facility D.
14 January 2014	Transferred to Facility E.
The Department of Immigration and Border Protection (DIBP) advised that Mr X is currently located at Facility C (date of transfer not provided).	
Mr X arrived in Australia with his wife, Ms Y and their two daughters, Miss Q and Miss R, who were granted Bridging visas on 28 January 2015 and released from detention.	

## 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.	
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## Health and welfare

8 February 2014	A DIBP Incident Report recorded that use of force was required to prevent Mr X from self-harming. No further information was provided.
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<sup>1</sup> DIBP's 24 month review on Mr X was due in June 2015. DIBP advised that the delay in provision of this review was due to a system failure.

21 March 2014	International Health and Medical Services (IHMS) advised that Mr X was diagnosed with post-traumatic stress disorder with acute anxiety during a consultation with a psychiatrist. He attended a follow-up review on 26 March 2014 and declined a prescription for antidepressant medication. Mr X was provided with supportive counselling by the mental health team.
21 April 2014 – 26 February 2015	Disclosed a history of torture and trauma and attended 11 specialist counselling sessions.
June 2015	IHMS advised that Mr X declined further supportive counselling.

### **Detention incidents**

DIBP Incident Reports recorded that Mr X was allegedly aggressive and abusive towards other detainees and detention staff on multiple occasions while in detention.	
18 December 2014	A DIBP Incident Report recorded that Mr X's wife, Ms Y, alleged that her husband was sexually abusing their daughters. DIBP was informed by the police that this allegation was withdrawn on 27 January 2015. No further information was provided.

### **Other matters**

4 February 2014	<p>Mr X lodged a complaint with the Ombudsman's office in relation to his separation from his wife and children. On 14 January 2014 Mr X was transferred to Facility E and his wife and children were transferred to Facility F. Mr X expressed concern about their ongoing separation and stated that he had not been provided with an explanation by DIBP about when they would be reunited.</p> <p>Following an investigation by the Ombudsman's office, DIBP advised that Mr X and his family were separated due to capacity issues at Facility F and that Mr X was offered daily visits to see his family.</p> <p>On 4 April 2014 the Ombudsman's office finalised the complaint after being satisfied that Mr X was able to visit his family on a regular basis.</p>
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### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 5 June 2013 after arriving in Australia aboard SIEV *Tiverton* 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.

The Ombudsman further notes that Mr X continues to be separated from his family as they were granted Bridging visas on 28 January 2015 and released from detention. The Ombudsman recommends that DIBP explore options to allow Mr X to reside with his family while he awaits the progression of his immigration case.