

## 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
<b>Year of birth</b>	1983
<b>Ombudsman ID</b>	1003051
<b>Date of DIBP's report</b>	16 July 2015
<b>Total days in detention</b>	730 (at date of DIBP's report)

### Detention history

16 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 792 <i>Lavaca</i> . He was transferred to Christmas Island Immigration Detention Centre.
3 August 2013	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.	
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. <sup>1</sup>
7 March 2015	DIBP advised that Mr X is considered a 'person of interest' to the Australian Security Intelligence Organisation (ASIO) as he disclosed alleged foreign criminal charges during his induction interview.  DIBP advised that Mr X's case was referred to ASIO for a security check.
16 July 2015	DIBP advised that Mr X is being considered for submission to the Minister under s 197AB for a community detention placement.

<sup>1</sup> 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

July 2013	International Health and Medical Services (IHMS) advised that during his induction health assessment Mr X presented with reduced hearing in his left ear related to a previous injury and requires a hearing aid. Mr X reported that he experiences disturbed sleep and tinnitus as a result of his injury. He was referred to an ear, nose and throat specialist for further treatment. IHMS advised that this appointment remained outstanding at the time of its report.
16 July 2013 – 7 February 2014	Disclosed a history of torture and trauma and attended 11 specialised counselling sessions.
22 July 2013	Identified as a tuberculosis contact. A chest x-ray identified no abnormalities and he is monitored as per state policy.  He was also diagnosed with an adjustment disorder, depression and anxiety following consultations with a psychiatrist. He declined a prescription for antidepressant medication and a referral for specialised counselling.
26 November 2013 and 3 June 2014	DIBP Incident Reports recorded that Mr X refused food and fluids as a form of protest. No further information was provided.
29 November 2013 – 15 January 2014	DIBP Incident Reports recorded that Mr X threatened self-harm on three occasions.
18 January 2014	Mr X was provided with a new hearing aid following a review with an audiologist.
10 December 2014	DIBP Incident Reports recorded that Mr X refused food and fluids as a form of protest and threatened self-harm during a mental health review. No further information was provided.
20 May 2015	Mr X's psychiatrist advised that Mr X's mental health would continue to deteriorate if he remains in restricted detention.  IHMS advised that Mr X's mental health continues to be monitored by the mental health team.

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 16 July 2013 after arriving in Australia aboard SIEV *Lavaca* 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.