

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first 486O assessment on Mr X who has remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1967
Ombudsman ID	1002534-O
Date of DIBP's reviews	22 October 2016 and 24 April 2017
Total days in detention	914 (at date of DIBP's latest review)

Detention history

23 October 2014	Detained under s 189(1) of the <i>Migration Act 1958</i> after disembarking at the port of City B without a visa. He was transferred to Villawood Immigration Detention Centre.
13 November 2014	Transferred to Wickham Point Alternative Place of Detention.
16 June 2016	Transferred to Facility C.

Visa applications/case progression

<p>Mr X arrived in Australia as a crew member aboard a ship without a visa. The Department of Immigration and Border Protection (the department) advised that he had lodged a Maritime Crew visa application prior to his arrival in Australia, but his application was refused on 23 October 2014.</p> <p>The department further advised that because Mr X arrived in Australia by sea after 19 July 2013, he is liable for transfer to a Regional Processing Centre (RPC) and barred under s 46A from lodging a valid protection visa application.</p> <p>The department advised that it is exploring options to enable the resolution of Mr X's immigration status.</p>	
23 October 2014	Requested voluntary removal.
26 October 2014	Mr X's scheduled voluntary removal was cancelled after he raised protection claims. He subsequently withdrew his request for removal.
5 December 2014	Lodged a Protection visa application.
14 April 2015	Protection visa application found to be invalid.
22 October 2016	The department advised that Mr X's case had been identified for inclusion on a ministerial submission for consideration under ss 195A, 197AB and 46A.
31 December 2016	Applied to the High Court for an injunction preventing his removal. The matter remained ongoing.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for a wrist fracture, chest pain and abdominal lipoma. His condition continued to be monitored by a general practitioner.	
16 April 2015 – 6 May 2015	Incident Reports recorded that Mr X refused food and fluid as a form of protest.
19 – 28 March 2017	Incident Reports recorded that Mr X refused food and fluid as a form of protest.

Information provided by Mr X

During an interview with Ombudsman staff at Facility C in June 2017 Mr X advised that he had not heard anything about the status of his Protection visa application. He stated that he had applied for a visa before arriving in Australia and believed he had arrived legally. He said he did not understand why the department was trying to transfer him to an RPC and advised that he has had a number of case managers and they had all given him conflicting advice about whether he would be sent to an RPC.

Mr X advised that he felt restricted detention was affecting his physical and mental health. He stated that he felt exhausted and suffocated by detention but had not reported these concerns to the IHMS mental health team. He advised that since transferring to Facility C he had not been invited to attend any excursions outside the detention centre.

Mr X advised that he had been offered assistance by the International Organization for Migration to return voluntarily to Country A but reported that he cannot return as his life is at risk.

He said that many members of his family had been killed in his home country and his brother was now the only person supporting his children. He said that he used to speak to his children everyday but now he only spoke with them a few times a month and he was worried about their welfare.

Ombudsman assessment/recommendation

Mr X was detained on 23 October 2014 after arriving in Australia by sea and has been held in restricted detention for more than two and a half years with no processing of his protection claims.

The department advised that because Mr X arrived in Australia by sea after 19 July 2013, he is liable for transfer to an RPC and barred under s 46A from lodging a valid protection visa application. The department further advised that it is exploring options to enable the resolution of Mr X's immigration status.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged restricted immigration detention may pose. The Ombudsman further notes with serious concern advice from the department that Mr X refused food and fluid as a form of protest for two significant periods of time.

The Ombudsman notes with serious concern that 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 strongly recommends that the Minister lift the bar under s 46A to enable Mr X to apply for a temporary protection visa.

The Ombudsman further recommends that priority is given to resolving Mr X's immigration status.