

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 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1995
Ombudsman ID	1003009
Date of DIBP's reports	20 March 2015 and 14 September 2015
Total days in detention	911 (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 as an unaccompanied minor aged 17 aboard Suspected Illegal Entry Vessel (SIEV) 601 <i>Biscayne</i> . He was transferred to Facility B. Mr X arrived in Australia with his brother, Mr Y, who is the subject of Ombudsman report 1003010.
23 July 2013	Transferred to Facility C. On the same day he was transferred to Facility D.
16 December 2013	Mr X absconded from detention. He was re-detained on 17 December 2013 and transferred to Facility E.
27 December 2013	Transferred to Facility F.
9 January 2014	Transferred to Facility G.
31 January 2014	Transferred to Facility E.
21 February 2014	Transferred to Facility G.
21 May 2014	Transferred to Facility D.
19 November 2014	Transferred to Facility G.
5 March 2015	Transferred to Facility D.
29 April 2015	Transferred to Facility G.

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. ¹
14 September 2015	DIBP advised that Mr X is being assessed against s 195A guidelines for a possible referral to the Minister for consideration of a Bridging visa.

Criminal history

16 December 2013	DIBP advised that Mr X escaped from his escort while attending school in City Q and was re-detained at R International Airport by the police. He was transferred to Facility E on 17 December 2013.
7 April 2015	Mr X was convicted of escaping from lawful detention and being in possession of a foreign passport and was fined \$50.

Health and welfare

25 August 2013	A DIBP Incident Report recorded that Mr X refused food and fluids as a form of protest.
26 October 2013	International Health and Medical Services (IHMS) advised that Mr X presented to his general practitioner with elbow pain and reported that he had previously fractured his arm. An x-ray was conducted and Mr X was diagnosed with immobilisation related to a bone deformity. He was referred for physiotherapy.
30 December 2013	He was referred to an orthopaedic specialist after physiotherapy was unsuccessful in relieving his elbow pain.
6 February 2014	Mr X was diagnosed with chickenpox and placed in isolation until his symptoms resolved.
12 September 2014	A magnetic resonance imaging scan was conducted on his elbow.
16 September 2014	Attended an appointment with an orthopaedic specialist and was provided with strengthening exercises.
10 October 2014	Mr X presented to the mental health team (MHT) with symptoms of low mood and sadness related to his prolonged detention. He attended a follow-up appointment with the MHT and was provided with supportive counselling.
29 December 2014	A DIBP Incident Report recorded that Mr X was allegedly sexually assaulted. IHMS advised that he presented to the MHT and was provided with supportive counselling. No further information was provided.
8 April 2015 – 9 April 2015	Mr X was placed on Supportive Monitoring and Engagement (SME) observations after experiencing distress. He reported that the perpetrator who allegedly assaulted him had been accommodated close to him. IHMS advised that he continued to follow-up with the MHT after the SME observations were ceased.

¹ 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.

Other matters

14 September 2014	DIBP advised that Mr X had been identified as a person of interest in relation to his alleged involvement in people smuggling activities. No further information was provided.
19 January 2015	DIBP received a complaint from the Australian Human Rights Commission on Mr X's behalf in relation to an alleged sexual assault. DIBP provided a response on 20 March 2015 and the matter was finalised on 27 May 2015.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 17 March 2013 after arriving in Australia as an unaccompanied minor aged 17 aboard SIEV *Biscayne*. He has been held in restricted detention for over two and a half 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.