

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1983
<b>Ombudsman ID</b>	1003073
<b>Date of DIBP's reports</b>	1 April 2015 and 23 September 2015
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

25 March 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 625 <i>Zaporojec</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
27 March 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
24 April 2013	Transferred to Wickham Point IDC.
9 January 2015	Transferred to Wickham Point APOD. <sup>1</sup>

### 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>2</sup>
23 September 2015	DIBP advised that Mr X is a person of interest to the Australian Security intelligence Organisation (ASIO) in relation to his alleged involvement in criminal activity overseas.  DIBP further advised that his case has been identified for assessment against the guidelines under s 195A for consideration of a Bridging visa. However, this referral was placed on hold pending further investigations by ASIO.

<sup>1</sup> DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising 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 is accommodated in the single adult male compound at Wickham Point APOD.

<sup>2</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

March 2013	During his induction health assessment Mr X reported a chronic nasal issue which was causing him migraines. He advised that prior to leaving Country A he had been informed that surgery was required.
November 2013	Referred to an ear, nose and throat (ENT) specialist.
22 May 2014	Reviewed by an ENT specialist and was diagnosed with a severely deviated nasal septum. He was placed on a public waiting list to undergo surgery. International Health and Medical Services advised that this procedure remained outstanding at the time of its report.

## Information provided by Mr X

During a telephone conversation with Ombudsman staff on 30 October 2015 Mr X advised that he is concerned about his immigration case and his prolonged detention.

He said that he attended two interviews with ASIO staff in 2014 and answered all their questions. He was unsure if ASIO was still investigating him.

Mr X stated that 32 months in detention is a long time and every day is the same. He tried to keep himself occupied by attending English classes, playing cricket and using the internet.

He said that he has no problems with his physical or mental health apart from detention fatigue.

## Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 25 March 2013 after arriving in Australia aboard SIEV *Zaporojec* and has been held in restricted detention for over two and a half years with no processing of his protection claims.

The Ombudsman notes that Mr X remains a person of interest to ASIO for his alleged involvement in criminal activity overseas.

The Ombudsman notes with concern that 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.