

## 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>	1992
<b>Ombudsman ID</b>	1003010
<b>Date of DIBP's reports</b>	20 May 2015 and 15 September 2015
<b>Total days in detention</b>	912 (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 aboard Suspected Illegal Entry Vessel (SIEV) 601 <i>Biscayne</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.  Mr X arrived in Australia with his brother, Mr Y, who is the subject of Ombudsman report 1003009.
23 July 2013	Transferred to Wickham Point APOD.
16 December 2013	Transferred to Northern Immigration Detention Centre (IDC).
30 December 2013	Transferred to Yongah Hill IDC.
9 January 2014	Transferred to Christmas Island IDC.
21 May 2014	Transferred to Wickham Point APOD.
19 November 2014	Transferred to Christmas Island IDC.
28 August 2015	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>

<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

25 August 2013	A DIBP Incident Report recorded that Mr X refused food and fluids as a form of protest. No further information was provided.
14 July 2014	International Health and Medical Services advised that Mr X presented to his general practitioner with a swollen lump. An ultrasound scan and biopsy were conducted and he was scheduled to attend a surgical review on 1 September 2015.

## Other matters

DIBP advised that results from a Five Country Conference fingerprint check indicated that on 24 June 2010 Mr X was convicted for drug production in the United Kingdom and received an 18-month custodial sentence.	
28 April 2015	DIBP advised that it conducted an Identity Desktop Analysis which concluded that Mr X's identity could not be determined by documentation he had provided. DIBP further advised that Mr X is known by three aliases.
8 September 2015	DIBP received a complaint from the Australian Human Rights Commission on Mr X's behalf. DIBP was due to respond on 6 October 2015. No further information was provided.

## Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 17 March 2013 after arriving in Australia aboard SIEV *Biscayne* and 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.