

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).

Name	Mr X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1003156
Date of DIBP's report	6 August 2015
Total days in detention	745 (at date of DIBP's report)

Detention history

22 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 799 <i>Wagarville</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
25 July 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.

Criminal matters

5 September 2014	A DIBP Incident Report recorded that Mr X was involved in a physical altercation with detainees of a different ethnicity at Facility B. He was charged on 1 December 2014 for his involvement in the riot by the Australian Federal Police and was scheduled to appear before the City C Magistrates Court on 13 October 2015.
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Health and welfare

24 July 2013	International Health and Medical Services (IHMS) advised that Mr X was reviewed by the mental health team following concerns for his mental health. He was provided with strategies to assist him in managing his anxiety and referred for specialist counselling. IHMS did not document whether Mr X attended specialist counselling.
28 July 2013 – ongoing	Mr X was identified as hepatitis C positive following routine pathology testing. His condition is monitored through regular ultrasounds and pathology testing.
13 January 2014 and 29 May 2014	DIBP Incident Reports recorded that Mr X refused food and fluids as a form of protest. No further information was provided.

22 January 2015 – ongoing	Mr X was diagnosed with swollen veins and provided with education. He continues to be monitored by his general practitioner and no complications have been reported.
11 April 2015	A DIBP Incident Report recorded that Mr X self-harmed by attempting to hang himself. No further information was provided.
8 June 2015	A DIBP Incident Report recorded that a Serco officer was notified that Mr X had threatened self-harm. No further information was provided.

Other matters

3 June 2014	<p>Mr X lodged a complaint with the Ombudsman's office alleging that DIBP had misplaced his personal property during his arrival at Facility B.</p> <p>Following an investigation by the Ombudsman's office, DIBP advised that Mr X's property was disposed of during the quarantine process as mould was identified on the property.</p> <p>On 20 August 2014 the Ombudsman finalised the complaint after being satisfied that Mr X had been informed about the quarantine process.</p>
4 September 2014	<p>Mr X raised further concerns with the Ombudsman's Office alleging that Serco had informed him that they had disposed of his property by mistake and would provide him with compensation.</p> <p>Mr X was advised to follow up with Serco in the first instance and if he was dissatisfied with their response he could lodge a new complaint with the Ombudsman's office.</p> <p>The complaint was finalised on 16 February 2015 as no further correspondence was received from Mr X.</p>

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 22 July 2013 after arriving in Australia aboard SIEV *Wagarville* 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.