

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Stateless (claimed), born in Country A of B ethnicity.
<b>Year of birth</b>	1995
<b>Ombudsman ID</b>	1003435
<b>Date of DIBP's report</b>	16 September 2015
<b>Total days in detention</b>	731 (at date of DIBP's report)

### Detention history

15 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aged 17 with his mother and three siblings <sup>1</sup> aboard Suspected Illegal Entry Vessel (SIEV) 850 <i>Huffman</i> . He was transferred to Facility C.
23 September 2013	Transferred to Facility D.
27 September 2013	Transferred to Facility E.
28 September 2013	Transferred to Facility F
9 October 2013	Transferred to Facility G.
11 October 2013	Transferred to Facility F.
15 June 2014	Transferred to Facility G.
1 July 2014	Transferred to Facility H
25 January 2015	Transferred to Facility J.

### 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.	
5 February 2015 and 27 April 2015	Mr X was referred for ministerial intervention under s 197AB for consideration of a community detention placement. On both occasions the Minister declined to intervene.
20 May 2015	Mr X's mother and three siblings were granted Bridging visas and currently reside in State K.

<sup>1</sup> Mr X's mother, Ms Y, and his three siblings were released from immigration detention on Bridging visas on 20 May 2015. They have been in detention for less than two years and are not subject to reporting under s 486N.

## Health and welfare

21 September 2013	International Health and Medical Services (IHMS) advised that Mr X was identified as a tuberculosis contact. Chest x-rays identified no abnormal results.
22 September 2013 – ongoing	<p>Mr X was reviewed by a psychiatrist with his mother present. His mother reported that Mr X contracted meningitis at the age of two and has experienced recurrent seizures since that time. She further advised that he was illiterate, had received no formal education and has the mental age of a five-year-old. Mr X was prescribed with medication for his condition and IHMS advised that he is semi-compliant with his medication regime.</p> <p>Mr X experienced numerous seizures during this reporting period. DIBP Incident Reports recorded that Mr X had seizures on 22 separate occasions. However, IHMS advised that he was hospitalised as a result of these seizures on three occasions.</p> <p>A magnetic resonance imaging scan and an electroencephalogram identified some abnormal results. IHMS advised that these abnormalities are not medically significant and do not affect Mr X's epilepsy.</p> <p>Mr X's epilepsy is monitored by his general practitioner (GP) and multi-disciplinary team who attempt to ensure his compliance with his medication regime.</p>
27 September 2013 – ongoing	<p>Serco reported to IHMS that Mr X was behaving aggressively towards others. Mr X was reviewed by a multi-disciplinary team who diagnosed him with developmental and intellectual disabilities, communication difficulties, poor impulse control and limited coping skills.</p> <p>IHMS reported that Mr X had a history of displaying sexually inappropriate and aggressive behaviour towards others and himself and during this period Mr X spent time in isolation as well as periods of time when he was closely monitored by Serco officers.</p> <p>Mr X's family were released on Bridging visas in May 2015 and IHMS reported that his aggressive behaviour had worsened since this time as a result of their separation.</p> <p>A review by the mental health team (MHT) and a psychologist recommended that Mr X be transferred to Facility G to be closer to his family. IHMS reported that he was awaiting transfer and continued to access his GP and the MHT as necessary.</p>
23 December 2013	A DIBP Incident Report recorded that Mr X attempted self-harm by stabbing himself in the stomach with a pen. DIBP advised that use of force was required to prevent Mr X from further injuring himself or Serco officers.
26 December 2013 – 9 September 2015	DIBP Incident Reports recorded that Mr X self-harmed by banging his head against a wall or piece of furniture on seven occasions during this period.
24 February 2014	A DIBP Incident Report recorded that Mr X threatened to kill himself if accommodated in an isolated area at Facility F.

23 February 2015 – 13 May 2015	Mr X attended seven appointments for occupational and speech therapy. He was assessed by an occupational therapist in May 2015 as requiring the support of family or other services as he did not have the skills to live independently.
7 July 2015	A DIBP Incident Report recorded that Mr X self-harmed. No further information was provided.
24 August 2015	A DIBP Incident Report recorded that Mr X attempted self-harm. No further information was provided.

### Detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous behavioural incidents while in detention, including assaulting detention centre staff and other detainees and displaying sexually inappropriate, aggressive, abusive and violent behaviour towards detention centre staff and other detainees. 11 incidents have been referred to the State L Police for investigation and nine of these have been finalised with no convictions recorded. Two allegations of assault were still being investigated by the State L Police at the time of DIBP's report.	
21 September 2013 – 10 December 2013	DIBP Incident Reports recorded that Mr X allegedly indecently assaulted female detainees and Serco officers on four occasions. Mr X allegedly attempted to kiss a Serco officer. He also allegedly touched a Serco officer and another detainee inappropriately. No further information was provided.
27 October 2013 – 25 August 2015	DIBP Incident Reports recorded that unplanned use of force was required on 12 occasions to prevent Mr X from injuring himself and others.
11 June 2014	A DIBP Incident Report recorded that Mr X allegedly committed offence M. The incident was referred to the State K Police for investigation and Mr X was served with an intervention order. Mr X was not convicted of any charges and the matter was finalised.
4 March 2015	A DIBP Incident Report recorded that Mr X allegedly attempted to indecently assault a male Serco officer by grabbing him inappropriately. The matter was referred to the State L Police for investigation. No further information was provided.
17 June 2015	A DIBP Incident Report recorded that Mr X allegedly assaulted a minor detainee by placing his hands around his throat and pushing him. The father of the minor detainee then allegedly assaulted Mr X by holding his throat and hitting him several times. The minor detainee did not sustain any injuries and Mr X was taken for medical assessment. No further information was provided.

## **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 15 September 2013 after arriving in Australia aboard SIEV *Huffman* and has been held in restricted detention for over two years with no processing of his protection claims.

The Ombudsman notes with concern the number of alleged incidents and serious behavioural issues involving Mr X in detention. The Ombudsman also notes advice from IHMS in September 2015 that Mr X was awaiting transfer to Facility G to be closer to his family, who were released on Bridging visas on 20 May 2015 and reside in State K.

The Ombudsman notes that at the time of writing this report Mr X was still detained at Facility J. The Ombudsman recommends that Mr X be transferred to an immigration detention facility in State K as soon as possible to be able to receive family support.

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 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.