

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	Stateless (claimed), born in Country A
Year of birth	1977
Ombudsman ID	1002781
Date of DIBP's reports	19 June 2015 and 15 December 2015
Total days in detention	912 (at date of DIBP's latest report)

Detention history

16 June 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 751 <i>Lanett</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
20 June 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
8 August 2013	Transferred to Wickham Point IDC.
9 January 2015	Transferred to Wickham Point APOD. ¹

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.	
DIBP identified Mr X as a person of interest following self-disclosed advice that he had been involved in a criminal offence in Country A.	
12 March 2014	Mr X was notified of the unintentional release of personal information through the DIBP's website. ² DIBP advised that this matter would be taken into account when assessing his protection claims.
29 March 2015	Mr X was identified for assessment against the guidelines under s 195A for a possible referral to the Minister for his consideration to grant a Bridging visa.

¹ 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.

² 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.

15 December 2015	DIBP advised that Mr X remains a person of interest in relation to his alleged involvement in a criminal matter in Country A.
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Health and welfare

23 June 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined a referral for specialist counselling.
2 September 2013	Mr X advised IHMS that he had previously suffered an eye injury which had resulted in decreased vision. He was referred to an optometrist for assessment.
12 September 2013	Attended an optometrist appointment and was referred to an ophthalmologist for further assessment and review.
18 September 2013	Following a deterioration in Mr X's mental state, he was reviewed by a psychologist who placed him on Supportive Monitoring and Engagement (SME) observations and referred him for psychiatric assessment in relation to acute anxiety disorder.
25 September 2013	Following a psychiatric review Mr X advised that his mental state had improved and he declined the offer of anti-anxiety medication.
27 September 2013	SME observations ceased after Mr X was said to have interacted positively with the mental health team (MHT).
13 January 2014 – 26 September 2014	Attended three appointments at an ophthalmology clinic.
19 April 2014	Placed on SME observations after presenting as feeling hopeless and helpless. The MHT monitored him on a regular basis and he was reviewed by the psychiatrist on 24 April 2014.
8 May 2014	SME observations ceased.
13 September 2014	Reviewed by the psychiatrist and no mental health issues or concerns were noted.
23 June 2015 – 21 November 2015	IHMS reported that Mr X had not presented with any chronic or acute mental health problems.
21 September 2015	Reviewed by an ophthalmology specialist for his ongoing vision impairment. No further information was provided.
27 November 2015	A DIBP Incident Report recorded that Mr X threatened to end his life. No further information was provided.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 3 December 2015 Mr X advised his case had been referred for consideration of a visa but he was unable to say what kind of visa.

Mr X confirmed that he had told DIBP in his entry interview that he had committed a criminal offence in Country A, but advised Ombudsman staff that in fact he had not committed a criminal offence. He explained that another asylum seeker had told him to say this because this may help his case. He said he had informed DIBP some time ago that the information he had given them was inaccurate.

Mr X indicated he did not wish to discuss any problems he was facing at Wickham Point APOD but advised he was not inclined to take part in the activities to any great extent. He said he had no health concerns.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 16 June 2013 after arriving in Australia aboard SIEV *Lanett* 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 advised DIBP that he had committed a criminal offence in Country A but that he claims he subsequently informed DIBP staff that this was incorrect. The Ombudsman further notes that he, and another Country A arrival on SIEV *Lanett*, Mr Y, who is subject to Ombudsman report 1002931, both provided the same information at their entry interview and now claim the information was either untrue or has been misinterpreted.

The Ombudsman notes that Mr X remains a person of interest to DIBP.

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.