

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	Country A
Year of birth	1982
Ombudsman ID	1002518
Date of DIBP's reports	30 April 2015 and 23 October 2015
Total days in detention	912 (at date of DIBP's latest report)

Detention history

24 April 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 672 <i>Walsall</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
25 April 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
20 May 2013	Transferred to Curtin IDC.
26 August 2014	Transferred to Yongah Hill IDC.
1 October 2015	Transferred to Christmas Island IDC.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that, prior to ministerial intervention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A.	
13 March 2014	Mr X was notified of the unintentional release of personal information through DIBP's website. ¹ DIBP advised that this matter would be taken into account when considering Mr X's protection claims.
19 May 2015	Mr X requested voluntary removal from Australia.
29 July 2015	He withdrew his request for voluntary removal.
25 August 2015	The Minister intervened and lifted the s 46A bar to allow Mr X to lodge a valid temporary visa application.
2 September 2015	DIBP invited Mr X to lodge a temporary visa application.
20 September 2015	Lodged a Temporary Protection visa (TPV) application.

¹ 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.

23 October 2015	DIBP advised that Mr X's case is being considered against the guidelines under s 195A for a referral to the Minister for consideration of a Bridging visa.
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Health and welfare

6 June 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma. He declined several offers of referral for specialist counselling.
November 2013	Mr X fell on his right arm which exacerbated a pre-existing injury he had sustained prior to his arrival in Australia. He was reviewed by the IHMS general practitioner (GP) who referred him to a physiotherapist for further management and prescribed him with pain relief medication.
9 January 2014	A DIBP Incident Report recorded that Mr X advised an IHMS nurse that he was intending to self-harm. No further information was provided.
10 January 2014	A DIBP Incident Report recorded that Mr X collapsed and this was treated as a medical emergency. No further information was provided.
16 January 2014 – ongoing	IHMS reported that Mr X has multiple mental health issues including anxiety and situational stress, significant active post-traumatic stress disorder (PTSD) and major depressive disorder. The IHMS psychologist noted that Mr X continued to present with multiple pain and symptoms. To benefit his mental health the psychologist recommended urgent consideration of Mr X's release into the community or to transfer him to a facility near his relatives in Sydney.
3 April 2014	A DIBP Incident Report recorded that Mr X threatened self-harm to his case manager. No further information was provided.
18 August 2014 – 23 August 2014	A DIBP Incident Report recorded that on 18 August 2014 Mr X had told a Serco officer that he was pursuing food and fluid refusal. IHMS advised that Mr X was placed on short-term Supportive Monitoring and Engagement/Psychological Support Program observations following thoughts of self-harm during a period of food and fluid refusal.
8 April 2015	An external psychologist reported that Mr X was suffering with chronic PTSD and a major depressive disorder to the extent that he had lost hope and had suicidal thoughts. The psychologist strongly recommended that Mr X be transferred to Sydney for family and mental health support.
July 2015	IHMS reported that during a mental health assessment Mr X was hostile and angry with the mental health nurse and noted that he should not be seen alone due to potential harm to others.

8 September 2015	Mr X complained to IHMS of severe chest pain. An IHMS nurse advised a Serco officer to call an ambulance to transfer Mr X to hospital for investigations but Mr X refused to be transferred to hospital. IHMS advised that no further chest pain episodes have occurred since.
30 September 2015	IHMS advised that Mr X continued to be supported by the mental health team with individual and group counselling sessions and he self-refers as needed.

Detention incidents

DIBP Incident Reports recorded that Mr X had been involved in several minor incidents of abusive and aggressive behaviour towards detention facility staff and on three occasions had climbed onto the roof causing a disturbance.	
23 July 2015	A DIBP Incident Report recorded that Mr X was found to be in possession of a weapon.

Other matters

7 November 2015	Mr X complained to Ombudsman staff during an inspection visit to Christmas Island IDC about his transfer to Christmas Island IDC and the use of restraints during the transfer. The Ombudsman's office provided Mr X with information about transfer decisions including that his transfer to Christmas Island in restraints was part of a pre-planned use of restraints for all detainees transferred to Christmas Island on 1 October 2015. The complaint was finalised on 16 December 2015.
14 December 2015	Mr X's lawyer contacted the Ombudsman's office concerned about Mr X's physical and mental health. He advised that if Mr X was transferred to Villawood IDC he would have family support available to him.

Information provided by Mr X

<p>During a telephone conversation with Ombudsman staff on 15 December 2015 Mr X advised that he would prefer to be located in Sydney where he has family and friends who can visit him. He stated that this would make detention more bearable.</p> <p>He said that DIBP staff did not explain to him about why he was transferred from Yongah Hill IDC to Christmas Island IDC and he was very upset that he was transferred in restraints. He said that a pre-existing shoulder condition was exacerbated when he was restrained in handcuffs for such a long period.</p> <p>Mr X said he feels a lot of stress from being in restricted detention and had regularly seen the IHMS counsellor but stopped because he believed that DIBP staff had told the counsellor not to help him. He stated that he last saw a psychologist in April 2015.</p> <p>Mr X said IHMS is not providing the support he needs at Christmas Island IDC and does not feel he can cope. He explained that one month ago he had wanted grief counselling after he heard about the accidental death of his nephew. He said he saw a mental health nurse and requested to see a psychologist but was still waiting for an appointment.</p> <p>Mr X stated that he feels very depressed and deprived of his basic human rights.</p>

Ombudsman assessment/recommendation

Mr X was detained on 24 April 2013 after arriving in Australia aboard SIEV *Walsall* and has been held in restricted detention for over two and a half years with no processing of his protection claims.

On 25 August 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa. On 20 September 2015 Mr X lodged a TPV application and is awaiting the outcome.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged and indefinite detention may pose. The Ombudsman notes with concern that IHMS has reported that Mr X has significant mental health issues which includes chronic PTSD. The Ombudsman also notes that psychologists have strongly recommended that Mr X be released from detention or be transferred to a facility near his relatives in Sydney.

The Ombudsman recommends that while Mr X is awaiting the outcome of his TPV application, consideration be given to transferring Mr X to Villawood IDC or to community detention so that he can have regular contact with his family and support network in Sydney.