

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	1984
Ombudsman ID	1003219
Date of DIBP's report	14 August 2015
Total days in detention	733 (at date of DIBP's report)

Detention history

11 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 829 <i>Marbury</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
12 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
24 May 2015	Transferred to Yongah Hill IDC.
25 May 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.	
23 March 2015	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ²

Criminal matters

5 September 2014	DIBP advised that Mr X was allegedly involved in a physical altercation with detainees of a different ethnicity at Christmas Island IDC.
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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.

27 November 2014	Mr X was charged by the police following his involvement in a riot at Christmas Island IDC.
12 May 2015	Mr X appeared before the Perth Magistrates Court and the matter was adjourned to 9 June 2015. He was scheduled to attend a hearing on 13 October 2015.

Health and welfare

9 November 2013	International Health and Medical Services (IHMS) advised that during his induction health assessment, Mr X presented with abnormalities related to a previous fracture and deformity of his nose. Although he had three operations he was still experiencing a blocked nasal cavity. He was referred to an ear, nose and throat (ENT) specialist for further review.
24 January 2015 – ongoing	IHMS advised that Mr X presented to the mental health team with symptoms of anxiety and was referred for supportive counselling.
28 May 2015	Reviewed by an ENT specialist who advised that Mr X required a specialist surgical procedure for his blocked nasal cavity. Mr X was informed that this could be followed up once he 'settles in the community'.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 11 August 2013 after arriving in Australia aboard SIEV *Marbury* 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 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.