

## 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 remained in restricted immigration detention for a cumulative period of more than 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1994
<b>Ombudsman ID</b>	1002826
<b>Date of DIBP's report</b>	2 July 2015
<b>Total days in detention</b>	741 (at date of DIBP's report)

### Detention history

21 February 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 590 <i>Qashqai</i> . He was transferred to Christmas Island Immigration Detention Centre (IDC).
4 April 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>
25 July 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin IDC.
26 July 2013	Transferred to Yongah Hill IDC.
17 August 2013	Absconded from immigration detention.
25 August 2013	Re-detained and transferred to Perth IDC. The Department of Immigration and Border Protection (DIBP) advised that Mr X was not charged for absconding from detention.
11 September 2013	Transferred to Christmas Island IDC.
26 November 2015	Granted a Bridging visa and released from detention.

### Visa applications/case progression

DIBP advised that prior to being released from detention, 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 the Minister had not lifted the bar under s 46A.	
10 November 2015	<p>DIBP confirmed that detainees transferred to an RPC who have been returned to immigration detention in Australia are subject to an additional bar under s 46B.</p> <p>DIBP further advised that these people cannot have the s 46B bar lifted to allow them to apply for a temporary visa until a new instrument is introduced which will bring them within the 'fast track' definition to have their protection claims processed.</p>

<sup>1</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

26 November 2015	Granted a Bridging visa.
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### Health and welfare

1 March 2013	International Health and Medical Services (IHMS) reported that while Mr X's induction blood test results identified a past hepatitis B infection he is immune and non-infectious.
26 August 2013	He attended hospital after he was re-detained. No further information was provided.
December 2014	IHMS advised that while Mr X was attending group therapy sessions he had self-referred to the mental health team as he felt upset after being in detention for 23 months with no decision on his immigration status. He complained of difficulty in sleeping, memory impairment, and depressed mood. He was provided with ongoing psychological support.
1 March 2015	The psychologist commented that Mr X appeared to have some symptoms arising from living in long-term detention which impinged on his ability to find any satisfaction from his daily routine.
8 April 2015	The psychologist noted that Mr X's depressed mood had improved slightly.
8 May 2015	The psychiatrist diagnosed Mr X with reactive depression. The psychiatrist commented that Mr X was suffering from low mood and anxiety in the context of prolonged detention.  Mr X declined medication offered as he felt his memory may suffer further impairment with medication.
27 May 2015	The psychologist commented that Mr X's mental health was affected by long-term detention and he was experiencing associated low mood and anxiety which stemmed from uncertainty about his future and immigration pathway. Mr X was said to be worried that he would become the longest serving detainee from Country A in immigration detention. He was provided with ongoing psychological counselling and was aware of how to self-refer.

### Other matters

5 November 2015	Mr X's migration agent contacted the Ombudsman's office about the effect protracted restricted detention was having on Mr X's health and wellbeing. The migration agent also expressed a number of concerns about Mr X's case, including his experience when he was transferred to an RPC, allegations that Mr X had been subjected to sexual harassment by another detainee, and the length of time he had been in restricted detention.
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### **Information provided by Mr X**

During a telephone conversation with Ombudsman staff on 29 October 2015 Mr X stated that other detainees in similar circumstances to himself, including those who had also escaped from detention, had received Bridging visas.

Mr X said that he was very stressed after more than two years in detention and he felt he was being treated as a trouble-maker. He explained his escape from Yongah Hill IDC in August 2013 as being a reaction to his case manager telling him that paperwork for him to return to Country A was being organised at the same time he had heard that officials were going to be at the detention centre.

He advised that his behaviour had been 'very good' since his return to detention in August 2013 following his escape, and that Serco officers would regularly ask him for language assistance when there were problems with other detainees from Country A.

### **Ombudsman assessment/recommendation**

Mr X was granted a Bridging visa on 26 November 2015 and released from immigration detention.

The Ombudsman notes that Mr X was detained on 21 February 2013 after arriving in Australia aboard SIEV *Qashqai* and was held in restricted detention for over two years before being granted a Bridging visa. The Ombudsman further notes that, at the time of DIBP's review, Mr X was subject to the bar under s 46A and processing of his claims for protection had not commenced.

The Ombudsman notes DIBP's advice that because Mr X spent a period of time in an RPC before being transferred back to Australia, he is subject to an additional bar under s 46B. DIBP has further advised that until a new instrument is introduced to lift this bar, Mr X will not be invited to apply for protection.

The Ombudsman recommends that priority is given to resolving Mr X's status to allow him to apply for a temporary visa.