

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Mr X who has remained in immigration detention for more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1987
Ombudsman ID	1002765-O
Date of department's report	14 September 2017
Total days in detention	730 (at date of department's report)

Detention history

13 September 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland ¹ by sea. He was transferred to Yongah Hill Immigration Detention Centre (IDC) and to Perth IDC later the same day.
8 December 2015	Transferred to Facility D.
21 April 2017	Transferred to Facility E.

Visa applications/case progression

<p>Mr X arrived in Australia on 13 September 2015 on his private yacht without a valid passport or visa. He was located by authorities and his yacht was searched and impounded.</p> <p>The Department of Home Affairs (the department) has advised that Mr X is barred under s 46A from lodging a valid protection visa application in Australia as a result of his method of arrival.</p>	
18 November 2016	Lodged a Temporary Protection visa (TPV) application. On 22 December 2016 Mr X was notified that his TPV application was deemed invalid as he is subject to the bar under s 46A.
14 September 2017	<p>The department advised that Mr X identified himself as Mr Y, a national of Country B, on arrival in Australia.</p> <p>The department's Identity Biometrics Assessment Division subsequently determined that he was Mr X with Country A citizenship. However, the authorities of Country A indicated that Mr X is a national of Country C who resided illegally in Country A.</p> <p>The department advised that Mr X is on a removal pathway, however his removal was likely to be protracted due to difficulties establishing his identity.</p>

¹ Following legislative amendment on 20 May 2013, all unauthorised maritime arrivals, including those who arrived on the Australian mainland or an 'excised offshore location' were barred from lodging a Protection visa application under s 46A.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X presented with symptoms of anxiety and depression related to his history of torture and trauma and the uncertainty of his future. He was provided with mental health support and in February 2016 he was identified as vulnerable by detention centre staff.

Mr X also received treatment for an ongoing cough and headaches with associated eye issues. He was referred to an optometrist and regularly reviewed by a general practitioner.

Ombudsman assessment/recommendation

Mr X was detained on 13 September 2015 after arriving on the Australian mainland by sea and has remained in an immigration detention facility for more than two years with no processing of his protection claims.

The Ombudsman notes the department's advice that Mr X is on a removal pathway, however his removal is likely to be protracted due to difficulties establishing his identity.

The Ombudsman also notes that under current policy settings Mr X is not eligible to have his protection claims assessed by Australia as he is subject to the bar under s 46A.

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. IHMS has advised that Mr X received mental health support for symptoms of anxiety and depression related to the uncertainty of his future.

In light of these concerns, the Ombudsman recommends that the Minister consider Mr X's case under s 46A and lift the bar to enable him to lodge a temporary protection visa application.