

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O report on Mr X who has remained in restricted immigration detention for more than 36 months (three years).

The first report 1001979<sup>1</sup> was tabled in Parliament on 12 August 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1982
<b>Ombudsman ID</b>	1002529
<b>Date of DIBP's reports</b>	11 May 2015 and 3 November 2015
<b>Total days in detention</b>	1,094 (at date of DIBP's latest report)

### Detention history

3 November 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 515 <i>Toyota</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.  The Department of Immigration and Border Protection (DIBP) advised that Mr X arrived with his aunt, Ms Y, who is residing lawfully in the community and his niece, Ms Z, who has departed Australia.
14 January 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
18 March 2013	Transferred to Wickham Point IDC.
18 November 2014	Transferred to Yongah Hill IDC.

### Visa applications/case progression

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.	
12 March 2014	Mr X was notified of the unintentional release of personal information through DIBP's website. <sup>2</sup> DIBP advised that the privacy breach would be taken into account when considering Mr X's protection claims.
13 August 2015	The Minister intervened to lift the bar under s 46A.

<sup>1</sup> Mr X was previously reported on in a group report of people who arrived on SIEV 515 *Toyota*.

<sup>2</sup> 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.

2 September 2015	DIBP invited Mr X to lodge a temporary visa application.
29 September 2015	Lodged an application for a Safe Haven Enterprise visa (SHEV).
3 November 2015	DIBP advised that character, security and identity assessments have been requested.

### Health and welfare

November 2012 – ongoing	International Health and Medical Services (IHMS) reported that Mr X was diagnosed with epilepsy and had required multiple hospital admissions because he had not been compliant with his medication.
2 December 2014 – 18 May 2015	IHMS advised that Mr X's epilepsy was stable and managed with medication. He was monitored by IHMS and a neurologist.
5 May 2015	At his 30-month mental health review IHMS noted that he was responding well to interactions with the mental health team and had been attending specialist counselling sessions.
18 May 2015	IHMS reported that Mr X's anxiety, post-traumatic stress disorder and depressive symptoms had improved and he was no longer prescribed with antidepressant medication.
July 2015	A mental health review noted that he presented with low mood, increased frustration, nightmares and anxiety related to restricted detention. He reported a lack of concentration and memory loss and requested a referral for specialist counselling.
August 2015	The general practitioner reported that Mr X's mood was unsettled as he was constantly worried about his immigration pathway. He was prescribed with antidepressant medication.
September 2015	He attended a specialist counselling session but declined to attend any further scheduled sessions.
18 May 2015 – 8 October 2015	IHMS advised that Mr X remained on prescription medication for his epilepsy but was intermittently compliant and required re-education about the importance of taking his medication.
9 October 2015	IHMS advised that Mr X's depression was ongoing and IHMS continued to monitor his mental health and he is aware of the self-referral process.

### Other matters

14 January 2013	Mr X's niece, Ms Z, alleged that Mr X had assaulted her. DIBP advised that the matter was investigated by the Australian Federal Police (AFP) and on 21 February 2013 the AFP finalised the matter without charge.
28 March 2013	The AFP applied for a Domestic Violence Order on behalf of Ms Z against Mr X. DIBP advised that the application was withdrawn on 9 May 2013 and the matter was dismissed.

7 July 2014	Mr X lodged a complaint with the Australian Human Rights Commission about his continued detention. DIBP advised that it provided responses on 15 October 2014, 2 December 2014 and 10 April 2015 and that the matter was ongoing.
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### Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 2 September 2015 Mr X said that he is an epileptic and was admitted to hospital in September 2014. He has no major physical health concerns but advised that he is very depressed and has nightmares and insomnia. He attends counselling every fortnight but he does not think it is helping him.

He participates in programs and activities at Yongah Hill IDC and, although he has not experienced any problems with other detainees, he avoids detainees who are not maritime arrivals.

Mr X said that his cousin, who arrived with him in November 2012, was granted a Bridging visa soon after their arrival and lives in Perth. He visits Mr X once a month.

### Ombudsman assessment/recommendation

Mr X was detained on 3 November 2012 after arriving in Australia aboard SIEV *Toyota* and has been held in restricted detention for over three years.

The Ombudsman's previous report (1001979) noted with concern the reported ongoing and escalating mental health issues for Mr X. The Ombudsman further notes that DIBP has not provided any advice in relation to whether Mr X has ever been assessed against the guidelines for consideration of a Bridging visa.

On 13 August 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa. On 29 September 2015 Mr X lodged an application for a SHEV and is awaiting the outcome.

While Mr X awaits the outcome of his SHEV application the Ombudsman recommends consideration of the grant of a Bridging visa to Mr X.