

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 a cumulative period of more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1003448
Date of DIBP's report	25 September 2015
Total days in detention	730 (at date of DIBP's report)

Detention history

20 December 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 558 <i>Kaiser</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
21 December 2012	Transferred to Christmas Island Immigration Detention Centre (IDC).
8 February 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
14 November 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Northern IDC.
22 February 2014	Transferred to Wickham Point APOD. ²

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.	
27 June 2011	While in Country A, Mr X lodged an application for a Tourist visa which was refused on 21 July 2011.
28 December 2012	DIBP received an anonymous allegation about Mr X concerning national security. This information was referred to an external agency for investigation.

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

² 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.

12 March 2014	DIBP notified Mr X of the unintentional release of personal information ³ and advised that the privacy breach would be taken into account when considering Mr X's protection claims.
17 June 2014	Found not to meet the guidelines for referral to the former Minister under s 195A.
9 July 2015	Referred for ministerial intervention under s 195A for consideration of a Bridging visa.
24 February 2016	DIBP advised that Mr X is not the subject of any current investigations by external agencies, but that he is matched to a red status on the Movement Alert List.
10 March 2016	DIBP confirmed that detainees who arrived in Australia prior to 19 July 2013 who were transferred to an RPC and subsequently returned to immigration detention in Australia are subject to an additional bar under s 46B. DIBP further advised that these people cannot have the s 46B bar lifted to allow them to apply for a temporary visa until a legislative instrument is introduced which will then bring them within the 'fast track' protection assessment process.

Criminal history

14 September 2013	Mr X was convicted by the Lorangau District Court in Papua New Guinea of possessing alcohol and received a six-month good behaviour bond.
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Health and welfare

2 September 2014	International Health and Medical Services (IHMS) advised that Mr X presented to a general practitioner (GP) complaining of breathing problems he attributed to his history of narrow nasal passages. He was prescribed with nasal spray and referred to an ear, nose and throat (ENT) specialist.
21 October 2014	Mr X presented to IHMS with intermittent heart palpitations, sweating and pain that he reported to have been experiencing for several weeks. He advised that he was feeling very stressed. He was referred for review of his physical symptoms by the GP. Mr X's regular counsellor was on leave on this date and IHMS advised that Mr X elected to wait for his counsellor to return to discuss the stress and anxiety he was experiencing. IHMS further advised that Mr X had regularly received counselling from the mental health team (MHT) for management of insomnia, anxiety and nightmares.
27 October 2014	Mr X was reviewed by the GP and investigative tests identified no abnormalities.

³ 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.

28 November 2014	<p>IHMS advised that Mr X was referred to the MHT for situational frustration and anger issues on multiple occasions. He was reviewed by a psychiatrist who reported him to be uncooperative and angry during the assessment. The psychiatrist assessed Mr X to have significant personality vulnerabilities.</p> <p>IHMS advised that Mr X regularly attended individual and group therapy counselling sessions to manage these issues.</p>
13 February 2015	Prescribed with a one month trial of antidepressant medication.
17 February 2015	Attended an appointment with an ENT specialist. IHMS advised that a follow-up appointment was outstanding at the time of its report.
24 February 2015	Mr X reported that he was ceasing the antidepressant medication because of unwanted side effects. He expressed interest in trying alternative natural therapies.

Detention incidents

19 July 2014 – 31 March 2015	DIBP Incident Reports recorded that Mr X allegedly behaved in an aggressive manner towards Serco officers on nine occasions.
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Other matters

10 April 2015	<p>Mr X's partner, Ms Y, lodged a complaint on his behalf with the Ombudsman's office alleging that DIBP's Complex Case Resolution Section (CCRS) relied on incorrect information in its assessment of whether Mr X's case met the guidelines for a ministerial submission under s 195A on 17 June 2014. She alleged that a serious behavioural incident was incorrectly listed on Mr X's record and was considered in this assessment.</p> <p>Following an investigation, the Ombudsman confirmed that CCRS acted reasonably in relying on information that was available to it at that time. However, the incorrect information was subsequently removed from Mr X's record.</p> <p>The complaint was finalised on 12 August 2015.</p>
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Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 20 December 2012 after arriving in Australia aboard SIEV *Kaiser* and has been held in restricted detention for a cumulative period of 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 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 legislative 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 immigration status.