

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 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1986
Ombudsman ID	1002931
Date of DIBP's reports	16 July 2015 and 7 January 2016
Total days in detention	913 (at date of DIBP's latest report)

Detention history

16 June 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 751 <i>Lanett</i> . He was transferred to Phosphate Hill Alternative Place of Detention (APOD), Christmas Island.
20 June 2013	Transferred to an APOD, Christmas Island.
4 July 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
26 July 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin Immigration Detention Centre (IDC) the same day.
28 August 2014	Transferred to Yongah Hill IDC.
24 March 2015	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.	
24 August 2013	DIBP identified Mr X as a person of interest following advice at his entry interview that he had been involved in criminal offences in Country A.

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	Mr X was notified of the unintentional release of personal information through DIBP's website. ³
7 May 2014	Mr X claimed that information he presented at his entry interview had been misinterpreted.
16 July 2015	DIBP advised that Mr X's case was being reviewed by the Complex Case Resolution Section as part of an 'allegations cohort'.
11 November 2015	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. 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.
7 January 2016	DIBP advised that Mr X remains a person of interest in relation to his alleged involvement in criminal matters in Country A.

Health and welfare

23 June 2013	International Health and Medical Services reported that Mr X disclosed a history of torture and trauma but declined a referral for specialist counselling. He was made aware of the self-referral process.
4 September 2014 – December 2014	He was diagnosed with a skin condition and an infection. He was prescribed with medication. No further concerns have been reported.
July 2015	Referred for physiotherapy following chronic lower back pain.
18 August 2015 – 22 September 2015	Attended weekly physiotherapy sessions.
15 December 2015	A DIBP Incident Report recorded that Mr X had commenced food and fluid refusal as a form of protest. No further information was provided.

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.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 16 June 2013 after arriving in Australia aboard SIEV *Lanett* and has been held in restricted detention for a cumulative period of over two and a half years with no processing of his protection claims.

The Ombudsman notes that Mr X advised DIBP that he had committed a criminal offence in Country A but that in May 2014 he claimed that this advice had been misinterpreted. The Ombudsman further notes that he, and another Country A arrival on SIEV *Lanett*, Mr Y, who is subject to Ombudsman report 1002781, both provided the same information at their entry interview and now claim the information was either untrue or has been misinterpreted.

The Ombudsman notes that Mr X's allegations were being reviewed in July 2015 and he remains a person of interest to DIBP.

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.