

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 more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1989
Ombudsman ID	1003436
Date of DIBP's report	16 September 2015
Total days in detention	730 (at date of DIBP's report)

Detention history

16 September 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland ¹ aboard Suspected Illegal Entry Vessel (SIEV) 848 <i>Faunsdale</i> . He was transferred to Northern Immigration Detention Centre (IDC).
18 October 2013	Transferred to Christmas Island IDC.
19 February 2015	Transferred to Wickham Point Alternative Place of Detention (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.	
12 June 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ³
26 June 2014	Mr X provided his response and DIBP advised that it was assessing whether he had raised further protection related claims as a result of the privacy breach.

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.

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.

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.

16 September 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ⁴ which found that the International Treaties Obligations Assessments (ITOA) process was procedurally unfair. DIBP further advised that it is in the process of seeking legal advice in relation to the judgment.
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Health and welfare

30 September 2013 – ongoing	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma, but reportedly changed his mind on multiple occasions about whether he wanted to attend specialist counselling. At his most recent mental health review in June 2015 Mr X declined a referral for specialist counselling. IHMS further advised that Mr X suffered from sleeping difficulties, reduced appetite, cultural isolation and concern for his family. He saw the psychologist as necessary to manage these concerns.
11 December 2013 – ongoing	Mr X reported a history of intermittent pain in his right flank and abdomen. An abdominal ultrasound and pathology tests identified no abnormal results.
January 2014	Received treatment for a urinary tract infection.
28 August 2014	Presented to the general practitioner (GP) with chest pain. A chest x-ray identified scoliosis of the spine. Mr X was referred to a physiotherapist who assessed that the scoliosis was not the cause of Mr X's pain, and referred him back to the GP.
3 January 2015	Mr X was referred to a urology specialist. IHMS advised that at the time of its report he was awaiting an appointment.
30 August 2015	IHMS advised that Mr X would benefit from being placed in a less restrictive environment.

Other matters

20 September 2013	DIBP received information alleging that Mr X had committed an offence offshore.
18 February 2015	DIBP was advised that Mr X was not facing charges for the alleged offshore offence.
DIBP advised that Mr X is the holder of a Country A passport valid until 2022.	

⁴ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Ombudsman assessment/recommendation

Mr X was detained on 16 September 2013 after arriving in Australia aboard SIEV *Faunsdale* and has been held in restricted detention for over two years with no processing of his protection claims.

Mr X's case is affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP advised that it is seeking legal advice in relation to the judgment.

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 notes the Minister's recent Statements to Parliament, in which he advises that DIBP is progressing the substantial caseload of maritime arrivals, and will provide him with advice to assist his consideration of whether to lift the bar to allow these people to lodge a temporary visa application.

The Ombudsman recommends that the Minister lift the bar under s 46A and processing of Mr X's protection claims commence as soon as possible.

The Ombudsman further notes the advice from IHMS in August 2015 that Mr X would benefit from a less restrictive detention environment. The Ombudsman recommends that consideration be given to granting a Bridging visa to Mr X while he awaits resolution of his immigration status.