

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1982
<b>Ombudsman ID</b>	1003469
<b>Date of DIBP's report</b>	29 September 2015
<b>Total days in detention</b>	731 (at date of DIBP's report)

### Detention history

16 September 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 449 <i>Dacomb</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
20 September 2012	Transferred to Christmas Island Immigration Detention Centre (IDC).
16 October 2012	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
28 October 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin IDC the same day.
28 August 2014	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point APOD. <sup>2</sup>

### 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.	
13 March 2014	Mr X was issued with a letter notifying him of the unintentional release of personal information through the DIBP's website. <sup>3</sup>
29 September 2015	DIBP advised that Mr X is a person of interest following information alleging his involvement in criminal activities offshore.

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

<sup>2</sup> 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.

<sup>3</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.

11 November 2015	<p>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.</p> <p>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 assessed.</p>
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### Health and welfare

14 November 2012	International Health and Medical Services advised that Mr X disclosed a history of torture and trauma and was referred for specialist counselling.
25 March 2013 – ongoing	Attended one specialist counselling session but declined to attend further sessions. IHMS advised that Mr X receives counselling from the mental health team.
22 February 2014	Presented with shoulder pain and was referred for physiotherapy.
24 April 2014	Presented with a lump behind his ear which was diagnosed by a general practitioner as a cyst. Mr X was referred to a general surgeon.
29 May 2014 and 30 July 2014	Attended two appointments with a general surgeon and underwent a procedure to remove the cyst.
6 August 2014	Attended a physiotherapy appointment.

### Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 16 September 2012 after arriving in Australia aboard SIEV *Dacomb* 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 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.