

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 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1969
Ombudsman ID	1003078
Date of DIBP's report	21 April 2015 and 14 October 2015
Total days in detention	913 (at date of DIBP's latest report)

Detention history

14 April 2013	Mr X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Broome, Australia aboard Suspected Illegal Entry Vessel (SIEV) 657 <i>Fowley</i> . He was transferred to Curtin Immigration Detention Centre (IDC).
17 April 2013	Transferred to Yongah Hill IDC.
18 April 2013	Transferred to Christmas Island IDC.
3 August 2013	Transferred to Yongah Hill IDC.

Visa applications/case progression

The Department of Immigration and Border Protection's (DIBP) 30-month review dated 14 October 2015 confirmed that as Mr X arrived in Australia as a 'direct entry person' ¹ he was not barred under s 46A from lodging a Protection visa application. DIBP further advised that following legislative amendment, Mr X is only eligible for a temporary visa.	
5 March 2014	Mr X was notified of the unintentional release of personal information through DIBP's website. ² DIBP advised that the privacy breach would be taken into account when considering Mr X's protection claims.
14 March 2014	Referred on a ministerial intervention submission under s 195A for consideration of a Bridging visa.
1 July 2014	Lodged a Protection visa application with an associated Bridging visa.

¹ A maritime arrival to Australia's mainland who is seeking protection. Maritime arrivals who arrived as 'direct entry persons' after 13 August 2012 and before 20 May 2013 are not subject to the s 46A bar.

² 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.

14 October 2014	Protection visa interview was conducted.
20 November 2014	The former Minister declined to intervene under s 195A.
30 April 2015	Protection visa application was refused.
1 May 2015	Associated Bridging visa application was deemed invalid. DIBP notified Mr X that following legislative amendment, his Protection visa application had been processed as a Temporary Protection visa application.
7 May 2015	Appealed to the Refugee Review Tribunal (RRT).
13 July 2015	RRT affirmed the original decision.
17 August 2015	Requested judicial review by the Federal Circuit Court (FCC).
14 October 2015	DIBP advised that Mr X was awaiting an FCC hearing.

Health and welfare

DIBP did not provide an International Health and Medical Services (IHMS) Health Summary Report for Mr X for the period 14 April 2013 to 13 October 2015.	
2013	IHMS reported that Mr X presented to the IHMS clinic with symptoms of insomnia and low mood (dates not provided). He attended counselling and was prescribed with medication.
22 April 2015	During a mental health assessment, Mr X advised that he continued to experience difficulty sleeping. No further mental health concerns were identified and he was advised to self-refer as required.

Detention incidents

29 August 2013	A DIBP Incident Report recorded that Mr X was allegedly involved in a physical altercation with another detainee. The incident was referred to the Australian Federal Police (AFP) for further investigation. On 27 March 2014, the AFP advised DIBP that the matter would not be investigated any further and had been finalised.
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Information provided by Mr X

<p>During an interview with Ombudsman staff at Yongah Hill IDC on 2 September 2015 Mr X advised that he had been invited to apply for protection and was interviewed in October 2014 but the purpose of the interview was not clear to him.</p> <p>Mr X said that there was an incident in August 2013 at Yongah Hill IDC where he had tried to stop a fight but he was accused of being involved. He was concerned he had a negative record because of this incident as other people from Country A had been released into the community but he had not.</p> <p>Mr X said that he was generally healthy but he believes that the stress from being held in detention had given him an ulcer.</p> <p>Mr X said that he speaks to his family in Country A every fortnight and the Country A detainees at Yongah Hill IDC receive visitors from the Country A community.</p>
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Ombudsman assessment/recommendation

Mr X was detained on 14 April 2013 after arriving in Australia aboard SIEV *Fowley* and has been held in restricted detention for over two and a half years.

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of judicial review.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged and indefinite detention may pose. The Ombudsman notes that Mr X has remained in restricted detention for over two and a half years and recommends that Mr X be considered for the grant of a Bridging visa while he awaits resolution of his immigration status.