

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	Stateless (claimed), born in Country A
Year of birth	1989
Ombudsman ID	1002214-O
Date of DIBP's reports	4 November 2015 and 4 May 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

20 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 860 <i>Rosemead</i> . He was transferred to an Alternative Place of Detention (APOD) Christmas Island.
22 October 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
25 October 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
9 November 2013	Returned to Australia for medical treatment and re-detained under s 189(1). He was transferred to Christmas Island IDC.
29 April 2015	Transferred to Wickham Point APOD.

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 March 2014	DIBP notified Mr X of the unintentional release of personal information. ²
10 March 2016	DIBP confirmed that detainees who arrived in Australia after 19 July 2013 who were transferred to an RPC but returned to immigration detention in Australia for medical reasons remain liable for transfer back to an RPC on completion of their treatment.

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 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.

Health and welfare

20 October 2013 – 23 March 2016	International Health and Medical Services (IHMS) advised that Mr X has not presented with any significant mental health concerns.
20 November 2013	IHMS reported that Mr X's induction blood test identified he was hepatitis B positive. He was monitored and tested regularly under a care plan.
11 October 2014	A liver specialist recommended that Mr X commence treatment but treatment was not commenced as Mr X was transferred to another facility.
7 October 2015	The IHMS general practitioner re-ordered testing and reported plans to refer Mr X to another liver specialist once the results were received.
8 December 2015	A liver specialist reported that Mr X most likely acquired the hepatitis as a child. Tests confirmed he is in the immune escape phase with an elevated liver function. He was commenced on treatment and a repeat scan in 12 months' time was recommended along with blood tests to check his progress.

Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Mr X expressed concern about his health.

He stated he became very depressed when he was on Manus Island and DIBP had not told him whether he will be returning there or not. Mr X said he cannot understand why he is still in detention, particularly because people who had arrived after him had been released.

Mr X stated because of depression and stress he generally does not take part in activities offered at Wickham Point APOD. He advised his physical health seems stable and he is taking medication to treat his infection.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 20 October 2013 after arriving in Australia aboard SIEV *Rosemead* 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 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 was transferred to an RPC but returned to immigration detention in Australia for medical reasons he remains liable for transfer back to an RPC on completion of his treatment.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X's immigration status.