

## 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>	1992
<b>Ombudsman ID</b>	1002242-O
<b>Date of DIBP's report</b>	30 November 2015
<b>Total days in detention</b>	732 (at date of DIBP's report)

### Detention history

10 November 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 861 <i>Saraqossa</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
12 November 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
12 November 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
29 November 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Northern IDC.
3 December 2013	Transferred to Christmas Island IDC.
22 January 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. <sup>2</sup>
16 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.

<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> 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

28 November 2013 – ongoing	International Health and Medical Services (IHMS) advised that Mr X was diagnosed with chronic hepatitis B. He was provided with education about the condition.  Mr X also disclosed that he had contracted a disease as a child and suffers from ongoing pain in his left leg, knee and back.
29 November 2013	DIBP advised that Mr X was transferred back to Australia from Nauru RPC for medical treatment.
6 January 2014	Mr X was identified as a tuberculosis contact. Chest x-rays identified no abnormalities and he was monitored as per state policy.
11 August 2014	An x-ray and computed tomography scan of Mr X's legs identified abnormalities. An orthopaedic specialist recommended physiotherapy and orthotics. Mr X was referred to a podiatrist to fit customised shoes and an orthopaedic specialist to discuss surgical options.
6 February 2015 and 31 August 2015	Liver ultrasounds identified no abnormalities.
30 October 2015	IHMS advised that Mr X was scheduled to see a podiatrist on 30 October 2015 and was still awaiting an appointment with an orthopaedic specialist.

## Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Mr X advised he was transferred to Nauru RPC for one to two weeks before being returned to Australia because of his medical conditions. He said he did not remember much about this time because he was very sick.

Mr X stated he has a lot of pain in his left knee and hip which prevents him from being able to sleep and makes it difficult to walk. He said he has been provided with customised shoes but they do not assist him and he has been waiting for an appointment with a specialist for nearly two years.

## Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 10 November 2013 after arriving in Australia aboard SIEV *Saraqossa* 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 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.