

**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 immigration detention for a cumulative period of more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1984
Ombudsman ID	1002449-O
Date of DIBP's report	15 July 2016
Total days in detention	730 (at date of DIBP's report)

Detention history

27 August 2013	Mr X was detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia with his wife Ms Y ¹ aboard Suspected Illegal Entry Vessel (SIEV) 840 <i>Xanadu</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
29 August 2013	They were transferred to Christmas Island Immigration Detention Centre.
20 September 2013	They were transferred to Nauru Regional Processing Centre (RPC). ²
15 June 2014	Mr X remained at Nauru RPC. Ms Y was returned to Australia and re-detained under s 189(1). She was transferred to Brisbane Immigration Transit Accommodation (ITA).
9 August 2014	Mr X returned to Australia and was re-detained under s 189(1). He was transferred to Wickham Point APOD.
12 August 2014	Mr X was transferred to Brisbane ITA and reunited with Ms Y.
9 October 2014	They were transferred to Bladin APOD.
26 February 2015	They were transferred to Wickham Point APOD.
19 April 2015	The family ³ was transferred to Melbourne ITA.
29 November 2015	Mr X was transferred to Wickham Point APOD. His family remained at Melbourne ITA.
1 January 2016	Mr X was transferred to Melbourne ITA and reunited with his family.
7 January 2016	The family was transferred to community detention.

¹ Ms Y is the subject of Ombudsman report 1002411-O.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

³ Miss Z was born in Australia in March 2015 and detained on 31 March 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

Visa applications/case progression

9 August 2014	Mr X was transferred from Nauru RPC to Australia on medical advice relating to his spouse Ms Y, who had returned to Australia previously for medical treatment.
29 December 2015	The Minister intervened under s 197AB to allow Mr X and his family to reside in community detention.
16 March 2016	The Department of Immigration and Border Protection (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.

Criminal history

November 2015	Mr X was convicted of causing harm to a Commonwealth official. He was released on a six month good behaviour bond.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and has attended specialist counselling and received support from the IHMS mental health team.</p> <p>IHMS further advised that Mr X has received treatment for a range of physical conditions including chronic ankle and back pain as a result of significant injuries sustained from a fall prior to his arrival in Australia. On 1 September 2014 he underwent surgery for removal of a pin in his foot and received extensive physiotherapy for his ankle and related back pain.</p> <p>Mr X has also been referred for respiratory review of a chronic cough and has commenced medication to reduce gastric irritation due to reflux disease.</p>

Other matters

31 July 2014	Mr X's wife Ms Y lodged a complaint with the Australian Human Rights Commission (AHRC) and on 27 April 2016 the AHRC advised that the circumstances would be subject to further consideration. The matter remains ongoing.
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Information provided by Mr X

Mr X contacted the Ombudsman's office on 16 September 2014 and noted concerns as to his wife's condition after being transferred to hospital following an attempted suicide. He was not allowed to visit Ms Y and felt that she would benefit from his support if he was able to visit her.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 27 August 2013 after arriving in Australia aboard SIEV *Xanadu* and has been held in 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 detention for an indefinite period.

The Ombudsman 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 wife's treatment.

The Ombudsman further notes that Mr X is a valuable family support for his wife, Ms Y, and that her significant mental health concerns were adversely affected when they were separated.

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