

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 Ms X who has remained in restricted immigration detention for a cumulative period of more than 24 months (two years).

Name	Ms X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1002255-O
Date of DIBP's report	9 December 2015
Total days in detention	730 (at date of DIBP's report)

Detention history

7 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 823 <i>Gadsden</i> . She was transferred to an Alternative Place of Detention (APOD), Christmas Island.
15 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
31 January 2014	Transferred to an APOD, Christmas Island.
3 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
7 June 2014	Returned to Australia and re-detained under s 189(1). She was transferred to Wickham Point APOD.
6 January 2015	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
30 May 2015	Transferred to Maribyrnong IDC.
18 February 2016	Transferred to Melbourne Immigration Transit Accommodation (ITA).

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Ms 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.	
5 March 2014	DIBP notified Ms X of the unintentional release of personal information. ²

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.

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.
12 April 2016	DIBP advised that Ms X remains liable for transfer to an RPC at an appropriate time.

Health and welfare

18 December 2013	International Health and Medical Services (IHMS) advised that Ms X was diagnosed with fibrocystic breast disease.
8 March 2014	Ms X reported to be experiencing chronic pelvic pain. She was reviewed by a gynaecologist in June 2014 and diagnosed with endometriosis and polycystic ovary syndrome.
June 2014 – ongoing	After reporting recurrent ear infections and reduced hearing in her left ear Ms X was referred to an ear, nose and throat (ENT) specialist. An audiological assessment identified hearing loss in her left ear and she was prescribed with ear drops. Ms X was unable to attend her scheduled appointment with the ENT on 18 June 2015 because she was transferred to Maribyrnong IDC. IHMS advised in November 2015 that she had a new referral in Melbourne but an appointment had not been confirmed.
10 June 2014 – 1 December 2015	Disclosed a history of torture and trauma and attended specialist counselling sessions.
15 August 2014 – 25 April 2015	DIBP Incident Reports recorded that she self-harmed on three occasions and threatened self-harm or suicide on five occasions.
17 September 2014 – ongoing	Reviewed by a psychiatrist and diagnosed with a borderline personality disorder. She was prescribed with medication and attends individual counselling and group therapy sessions.
21 October 2014	After reporting worsening vision in her right eye over the past ten months she was reviewed by an ophthalmologist who excluded pathological causes for her vision loss.
15 December 2014	She underwent laparoscopic surgery. IHMS advised that her gynaecological conditions are managed with medication and by a general practitioner as required.
16 December 2014	A DIBP Incident Report recorded that she suffered an asthma attack. No information was provided by IHMS.
5 February 2015	A DIBP Incident Report recorded that she was taken to hospital by ambulance after reporting severe stomach pain.
13 June 2015	A DIBP Incident Report recorded that she was transferred to hospital with acute pain due to kidney problems.
24 July 2015	A DIBP Incident Report recorded that an ambulance was called for Ms X. No further information was provided.
10 September 2015	She was reviewed at an emergency department for a renal condition. She was advised to drink more fluids and prescribed with medication.

5 November 2015	Attended a urology appointment and underwent treatment for renal stones. She was prescribed with pain relief medication.
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Detention incidents

13 June 2015 – 5 November 2015	DIBP Incident Reports recorded that mechanical restraints and the enhanced escort position were used on Ms X on ten occasions. On at least six of these occasions she was transferred to or from hospital.
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Other matters

3 June 2015	Ms X lodged a complaint with the Australian Human Rights Commission in relation to medical care at Nauru RPC. The complaint was transferred to the Ombudsman's office on 29 June 2015 and finalised on 24 August 2015.
21 June 2015	DIBP advised that Ms X became engaged to Mr Y.
13 August 2015	Ms X lodged a complaint with the Ombudsman's office about the appropriateness of her placement at Maribyrnong IDC as a single adult female. The complaint was finalised on 10 September 2015.

Information provided by Ms X

During an interview with Ombudsman staff at Melbourne ITA on 24 March 2016 Ms X stated she had been transferred to Nauru RPC for four months but did not want to talk about this time. She said she had been transferred back to Australia for medical treatment and her lawyer had told her she would not be sent back to Nauru RPC.

Ms X advised she was detained at Maribyrnong IDC for eight months which was a very stressful experience because of the cohort of detainees there. She said she does not talk to other detainees, preferring to stay in her room and listen to music. She does not know what is happening with her immigration case and sometimes feels like 'giving up'.

Ms X also advised that she was no longer engaged to Mr Y.

Ombudsman assessment/recommendation

The Ombudsman notes that Ms X was detained on 7 August 2013 after arriving in Australia aboard SIEV *Gadsden* and has been held in restricted detention for a cumulative period of over two years with no processing of her 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 Ms X's claims to determine if she is found to engage Australia's protection obligations, it appears likely that she will remain in restricted detention for an indefinite period.

The Ombudsman further notes DIBP's advice that because Ms X was transferred to an RPC but returned to immigration detention in Australia for medical reasons she remains liable for transfer back to an RPC on completion of her treatment.

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