

**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).

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1989
<b>Ombudsman ID</b>	1002236-O
<b>Date of DIBP's report</b>	25 November 2015
<b>Total days in detention</b>	734 (at date of DIBP's report)

**Detention history**

22 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 851 <i>Irving</i> . She was transferred to an Alternative Place of Detention (APOD), Christmas Island.
24 September 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
23 November 2013	Returned to Australia and re-detained under s 189(1). She was transferred to Northern Immigration Detention Centre.
28 November 2013	Transferred to Berrimah House APOD.
29 November 2013	Transferred to Christmas Island APOD.
31 January 2014	Transferred to Darwin Airport Lodge APOD.
3 February 2014	Transferred to Inverbrackie APOD.
4 February 2014	Transferred to Melbourne Immigration Transit Accommodation (ITA).
21 April 2015	Transferred to a psychiatric clinic.
2 July 2015	Transferred to Melbourne ITA.
7 November 2015	Transferred to a psychiatric hospital.
11 November 2015	Transferred to Melbourne 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.

<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.

4 October 2013	Ms X claimed to be an unaccompanied minor. She was transferred back to Australia on 23 November 2013 to investigate her identity and for medical treatment.
23 December 2013	An initial age determination conducted by DIBP confirmed that Ms X was likely less than 18 years old.
13 March 2014	DIBP notified Ms X of the unintentional release of personal information. <sup>2</sup>
1 July 2014	Ms X admitted that she had previously provided false information about her date of birth and that she was over 18 years of age when she arrived in Australia.
25 November 2015	DIBP advised that Ms X is a person of interest in relation to an alleged criminal matter while onshore.
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 the alleged onshore criminal matter was an incident of minor damage to property that occurred on 7 July 2015. The Australian Federal Police (AFP) have declined to investigate, but the matter remains with the Victoria Police.

#### Health and welfare

23 November 2013 – ongoing	International Health and Medical Services (IHMS) advised that during her induction health assessment Ms X reported to have asthma. She has received treatment from IHMS and a hospital emergency department. DIBP Incident Reports recorded that on two occasions an ambulance was called for Ms X when she suffered an asthma attack.
February 2014	Ms X complained of ongoing abdominal pain and diarrhoea and underwent investigative tests. She was diagnosed with irritable bowel syndrome and given dietary advice by a specialist.
7 March 2014 – 20 November 2015	DIBP Incident Reports recorded that Ms X self-harmed on five occasions.
3 October 2014	A DIBP Incident Report recorded that Ms X complained of severe chest pain, weakness and shortness of breath. She was given medication after advising that she had not taken her anxiety medication the previous day.
18 November 2014 – ongoing	Ms X was diagnosed with a vitamin D deficiency and prescribed with medication.
21 April 2015 – 2 July 2015	DIBP advised that Ms X was admitted to a psychiatric hospital.

<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.

30 June 2015	Ms X's psychiatrist advised that her risk of suicide is contingent with the stress of her situation and expressed concern that this will impact her mental health in the medium to long term. The psychiatrist assessed Ms X to have limited coping skills and little social or emotional support and recommended she be released into the community on mental health grounds.
August 2015 – ongoing	Ms X reported ongoing knee pain but diagnostic tests identified no abnormalities. She attended two physiotherapy sessions and IHMS advised that at the time of its report she was awaiting a magnetic resonance imaging scan.
10 September 2015	A DIBP Incident Report recorded that Ms X was taken to hospital after collapsing and complaining of stomach pain. IHMS advised that she was diagnosed with gastritis.
3 November 2015	IHMS advised that Ms X has been diagnosed with an adjustment disorder, post-traumatic stress disorder, depression and anxiety. She has required extensive mental health support from IHMS and specialist counselling services and when her mental health conditions are exacerbated she has been placed on Supportive Monitoring and Engagement observations.
7 November 2015	A DIBP Incident Report recorded that an ambulance was called for Ms X after she was found lying on the ground crying in pain. She was admitted to hospital and discharged on 10 November 2015.

#### **Detention incidents**

5 March 2014 and 6 August 2014	DIBP Incident Reports recorded that Ms X was allegedly the victim of abusive and aggressive behaviour by another detainee.
7 July 2015	A DIBP Incident Report recorded that Ms X used a chair to break a window and attempted to use the broken glass to self-harm. Serco officers consoled her and used minimal force to remove the broken glass from her hand. Ms X was assessed by ambulance officers and advised she was anxious that she would be transferred to Nauru RPC overnight, but had no thoughts of self-harm anymore. She was closely monitored by Serco officers.

#### **Other matters**

25 November 2014	Ms X married fellow detainee Mr Y. DIBP advised that Mr Y was granted a Bridging visa and is residing lawfully in the community.  DIBP further advised that Ms X and Mr Y are now estranged.
19 November 2015	A DIBP Incident Report recorded that Ms X advised the Australian Border Force during an interview that she had been sexually assaulted by a guard during her first week at Nauru RPC. The matter was referred to the Nauru Police on 23 November 2015.

### **Information provided by Ms X**

During an interview with Ombudsman staff at Melbourne ITA on 24 March 2016 Ms X advised she had been transferred to Nauru RPC for two months and the conditions there were very difficult and negatively impacted her mental health.

Ms X stated that she had been admitted to a psychiatric clinic for two months but since her return to detention her mental and physical health have deteriorated. She still sees a psychiatrist and she said she could not go back to Nauru RPC because of her health issues.

Ms X also advised she is now separated from her husband who has been released on a Bridging visa because he would not wait for her.

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Ms X was detained on 22 September 2013 after arriving in Australia aboard SIEV *Irving* 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 the advice from IHMS that Ms X has a history of self-harm and significant ongoing mental health issues for which she was hospitalised for two and a half months in 2015. The Ombudsman further notes that Ms X was allegedly sexually assaulted while at Nauru RPC and her psychiatrist's concerns that ongoing detention is negatively impacting Ms X's mental health in the medium to long term and placing her at risk of suicide.

The Ombudsman notes the advice of Ms X's psychiatrist in June 2015 that she be released into the community on mental health grounds. The Ombudsman recommends that consideration be given to transferring Ms X to community detention.

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.