

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	Country A
Year of Birth	1976
Ombudsman ID	1002197-O
Date of DIBP's reports	21 October 2015 and 12 April 2016
Total days in detention	906 (at date of DIBP's latest report)

Detention history

13 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 847 <i>Empire</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
15 September 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
9 October 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
14 November 2013	Returned to Australia 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.	
13 March 2014	DIBP notified Mr X of the unintentional release of personal information ² and advised that the privacy breach would be taken into account when considering his protection claims.
12 April 2016	DIBP advised that it was exploring options to enable the resolution of Mr X's immigration status.

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

28 September 2013	International Health and Medical Services (IHMS) advised that Mr X tested positive for hepatitis B and that his condition is monitored with regular blood tests.
3 November 2013 – ongoing	Presented with neck, back and shoulder pain and headaches. A magnetic resonance imaging scan identified no abnormalities. He was also reviewed by an ophthalmologist who recommended reading glasses.
30 September 2015 – 11 March 2016	Routine blood tests showed that his levels of hepatitis B were no longer detectable and his condition was considered to be resolved.
8 December 2015 – ongoing	Mr X's neck pain was identified to be potentially stress-related. He also presented with depressed mood. He was referred to the mental health team (MHT) and prescribed with antidepressant medication. IHMS advised that Mr X's mental health is monitored regularly and he is supported by the MHT.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 12 February 2016 and an interview with Ombudsman staff at Wickham Point APOD on 18 April 2016 Mr X confirmed he was transferred to Manus Island RPC for one month before being returned to Australia and told he had hepatitis B.

Mr X claimed to have no physical health concerns when he arrived in Australia and believes his health problems started when he was transferred to Manus Island RPC. He said his physical health was deteriorating daily and he now took four kinds of medicine.

Mr X was uncertain whether he would be returned to Manus Island RPC. He advised in July 2015 his case manager told him that he would be but his new case manager has not mentioned this.

Mr X said he was unclear about the current condition of his hepatitis B. He claimed each time he has a blood test he was told something different and he does not have access to his medical records. He advised he now sees a psychologist once a week because he is depressed as a result of the uncertainty of his situation.

He advised he did not participate in excursions at Wickham Point APOD because he always felt tense and worried. He said he attended the English classes but could not focus because he was worried about his future.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 13 September 2013 after arriving in Australia aboard *SIEV Empire* 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 that IHMS has reported that Mr X's hepatitis B condition was considered to be resolved in March 2016 but this does not appear to have been made clear to Mr X. The Ombudsman recommends that Mr X is provided with information about his physical health including the status of his hepatitis B condition.

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 notes DIBP's advice that it is exploring options to enable resolution of Mr X's immigration status and recommends that priority is given to this matter.