

## 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>	Stateless (claimed), born in Country A
<b>Year of birth</b>	1967
<b>Ombudsman ID</b>	1002267-O
<b>Date of DIBP's report</b>	17 December 2015
<b>Total days in detention</b>	730 (at date of DIBP's report)

### Detention history

27 November 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 865 <i>Wedowee</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
28 November 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
29 November 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
19 December 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.	
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

27 November 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined specialist counselling. He attends group counselling sessions and routine mental health assessments.
18 December 2013 – ongoing	Mr X was identified to have hepatitis C. He was provided with education and referred for testing and to a liver clinic.
19 December 2013	DIBP advised that Mr X was transferred back to Australia from Nauru RPC for medical treatment.
12 April 2014	A DIBP Incident Report recorded that Mr X threatened self-harm.
29 May 2014	A DIBP Incident Report recorded that Mr X refused food and fluid.
21 July 2014 – ongoing	Mr X presented with chronic pain in both feet and was diagnosed with plantar fasciitis and a bone spur. He was referred to a podiatrist, provided with supportive footwear and given steroid injections to manage his pain.
10 October 2014	Attended an appointment at a liver clinic.
30 October 2014	An IHMS general practitioner (GP) noted Mr X met the criteria for hepatitis C treatment. Management of his condition was to be confirmed by a liver clinic.
3 November 2014 – ongoing	Mr X was diagnosed with a deviated nasal septum and allergic rhinitis. He was prescribed with medication and referred to an ear, nose and throat specialist. An appointment remains outstanding.
23 November 2015 – ongoing	IHMS advised that Mr X is still awaiting an appointment at a liver clinic in Darwin. His hepatitis C is monitored by IHMS with blood tests and ultrasounds every six months.

## Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 21 April 2016 Mr X advised he had been transferred to Nauru RPC for a short time. Mr X said at Nauru RPC he was constantly bitten by mosquitoes and did not receive any medical treatment. He compared Nauru RPC to his home country, claiming in both situations he was persecuted and no one 'outside' knew what was happening to him.

Mr X stated he was returned to Australia for medical treatment after he was diagnosed with hepatitis C, but claimed he has not received any medical treatment since being returned. Mr X said that two months ago he attended the hospital and was told his condition was deteriorating but he does not know what is happening with his treatment. He said he could not go back to Nauru RPC because of his health condition.

Mr X said he has a brother living in Sydney who arrived in 2013 and if he has to remain in detention he would like to be detained in Sydney so his brother could visit him.

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 27 November 2013 after arriving in Australia aboard SIEV *Wedowee* 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 notes with concern that Mr X was transferred to Australia to receive medical treatment, but in November 2015 IHMS advised that Mr X had been waiting for more than 12 months for a course of treatment for hepatitis C to be confirmed by the liver clinic.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X's immigration status. The Ombudsman further recommends that consideration be given to transferring Mr X to Villawood IDC to be closer to his support network while he awaits resolution of his immigration status.