

**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).

Name	Mr X
Citizenship	Stateless (claimed), born in Country A
Year of birth	1974
Ombudsman ID	1002320-O
Date of DIBP's report	17 February 2016 ¹
Total days in detention	802 (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 Australian 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). ²
10 December 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Northern IDC.
11 December 2013	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.	
10 December 2013	DIBP advised that Mr X was returned to Australia from Nauru RPC to receive medical treatment.

¹ DIBP advised that it did not meet its statutory obligations in relation to Mr X due to unforeseen technical difficulties which precluded normal reporting procedures from being followed. DIBP further advised that it is working with DIBP's information technology systems to correct this issue.

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.

17 February 2016	DIBP advised that Mr X was identified as possibly affected by the unintentional release of personal information. ³
11 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.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was diagnosed with hepatitis B and referred to a liver specialist. His condition has been monitored and he has undergone regular liver function tests. He has also been reviewed by an ophthalmologist for decreased vision problems and no abnormalities were identified.

IHMS reported that Mr X has been treated for ongoing situational stress and anxiety. He was prescribed with antidepressant medication and he sees the mental health team (MHT) fortnightly for supportive counselling.

Other matters

3 November 2015 – ongoing	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC) alleging his detention is arbitrary. The AHRC notified DIBP on 21 December 2015 and DIBP provided a response on 16 February 2016.
17 February 2016	DIBP advised that Mr X's cousin, Ms Y, arrived on SIEV <i>Trinity</i> and resides in the community on a Bridging visa.

Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 21 April 2016 Mr X said he feels hopeless about his situation and suffers from anxiety and depression, insomnia and high blood pressure. He said he does not feel counselling or medication is necessary but he continues to see the MHT.

Mr X stated he is a teacher and while in detention he has learnt English and also taught English to other detainees. He said he participates in a few activities offered in the detention facility and enjoys attending English classes.

³ 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.

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 that s 486N(1)(b) records the Secretary of DIBP's obligation to report to the Commonwealth Ombudsman within 21 days after the detention reporting time.

In the case of DIBP's review on Mr X, the Ombudsman notes with concern that DIBP advised that it did not meet its statutory reporting timeframes due to unforeseen technical difficulties which precluded normal reporting procedures from being followed. The Ombudsman notes that DIBP advised that it is working with DIBP's information technology systems to correct this issue.

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