

**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 immigration detention for a cumulative period of more than 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1968
<b>Ombudsman ID</b>	1002350-O
<b>Date of DIBP's report</b>	25 March 2016
<b>Total days in detention</b>	730 (at date of DIBP's report)

**Detention history**

13 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 826 <i>Jasper</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.  Mr X arrived with his wife, Ms Y and their three sons.
20 August 2013	The family were transferred to Christmas Island Immigration Detention Centre (IDC).
21 March 2014	The family were transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
11 September 2014	Mr X was returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation (ITA). <sup>2</sup>
28 November 2014	Mr X was transferred to Wickham Point IDC.
29 November 2014	Mr X was transferred to Nauru RPC.
19 January 2015	Mr X and his wife and three children were returned to Australia and re-detained under s 189(1). They were transferred to Brisbane ITA. <sup>3</sup>
7 August 2015	The family was transferred to Wickham Point APOD.
10 March 2016	The family was transferred to community detention.

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<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> Mr X's wife and three children remained at Nauru RPC during Mr X's first transfer to Australia for medical treatment on 11 September 2014.

<sup>3</sup> Mr X's wife and children have been in immigration detention for less than two years and are not yet subject to reporting under s 486N.

### Visa applications/case progression

12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information. <sup>4</sup>
19 January 2015	Mr X and his family were transferred from Nauru RPC to Australia for medical treatment.
24 February 2016	The Minister intervened under s 197AB to allow Mr X and his family to reside in community detention.
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.

### Health and welfare

*Mr X*

International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and was monitored by IHMS.

IHMS further advised that Mr X has a prosthetic eye and receives treatment for recurring infections and associated pain. He was fitted with a new prosthesis on 19 November 2014 and continues to be reviewed by an ophthalmologist.

Mr X received specialist treatment for multiple physical health conditions, including a previous bone fracture, reduced hearing, hernias and nerve abnormalities. He was referred for a surgical procedure to manage his nerve condition and hernia and has been placed on a hospital waiting list for a colonoscopy.

### Other matters

14 March 2014	Mr X lodged a complaint with the Ombudsman's office in relation to the provision of medical treatment at Christmas Island IDC. On 12 June DIBP provided its response and on 25 June 2014 the complaint was finalised.
3 March 2015	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 30 April 2015 DIBP provided a response to the AHRC. On 18 June 2015 and 9 October 2015 DIBP provided further information. The matter remained ongoing at the time of DIBP's latest review.

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<sup>4</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.

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X was detained on 12 August 2013 after arriving in Australia aboard SIEV *Jasper* and has been held in 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 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.