

**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 30 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1979
Ombudsman ID	1002238-O
Date of DIBP's reports	27 November 2015 and 27 May 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

23 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 802 <i>Coalburg</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island. Mr X arrived with his wife, Ms Y and daughter, Miss Z, who are the subject of Ombudsman report 1002025-O.
25 July 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
15 August 2013	Transferred to Christmas Island APOD.
6 February 2014	Transferred to Christmas Island IDC.
7 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
14 June 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
6 January 2015	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
11 July 2015	Transferred to Melbourne Immigration Transit Accommodation.
1 December 2015	Transferred to community detention where he resides with his wife and two daughters. ²

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.

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 Mr X and Ms Y's second child, Miss B, was born in Australia on 2 April 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

14 June 2014	DIBP advised that Mr X was returned to Australia from Nauru RPC to join his wife and daughter who are undergoing medical treatment in Australia.
1 December 2015	The Minister intervened under s 197AB to approve a community detention placement.
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 reported to have been previously diagnosed with acute lymphocytic leukaemia. He was treated for this condition with chemotherapy and radiotherapy in Country A, but said he feared his condition would return due to his current stress levels. Mr X was also diagnosed with a genetic blood disorder (thalassemia minor). International Health and Medical Services (IHMS) advised that his conditions are monitored by regular blood tests and he is reviewed by a general practitioner as required.

Mr X presented with worsening hearing loss and tinnitus in one ear and after being returned to Australia in July 2014 he saw an audiologist for review and management of the issue.

IHMS advised that in September 2015 Mr X requested a referral for his family for psychological counselling to assist them to deal with living in restricted detention, which he identified as a source of trauma. In November 2015 he presented to the mental health team expressing concern about his daughters' health problems and their continued detention. He was diagnosed with an adjustment disorder with anxious mood and complained of sleeping difficulties, but declined medication. Mr X and his family attended regular specialist counselling appointments between September 2015 and December 2015 when they were transferred to community detention. After being transferred to the community Mr X was referred for further psychological counselling sessions at his request.

Other matters

11 June 2015	Mr X lodged a complaint with the Australia Human Rights Commission (AHRC). On 30 July 2015 DIBP provided a response to the AHRC. The matter remained ongoing at the time of DIBP's latest review.
--------------	---

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 23 July 2013 after arriving in Australia aboard SIEV *Coalburg* 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 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 on account of his wife and daughter requiring medical treatment, he remains liable for transfer back to an RPC on completion of his family's medical treatment.

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