

**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).

|                                |                                       |
|--------------------------------|---------------------------------------|
| <b>Name</b>                    | Mr X                                  |
| <b>Citizenship</b>             | Country A                             |
| <b>Year of birth</b>           | 1979                                  |
| <b>Ombudsman ID</b>            | 1002365-O                             |
| <b>Date of DIBP's reports</b>  | 12 April 2016 and 8 October 2016      |
| <b>Total days in detention</b> | 912 (at date of DIBP's latest report) |

**Detention history**

|               |   |
|---------------|---|
| 22 July 2013  | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 799 <i>Wagarville</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 25 July 2013  | Transferred to Christmas Island Immigration Detention Centre (IDC).   |
| 31 July 2013  | Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>  |
| 19 April 2014 | Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation.   |
| 1 August 2014 | Transferred to Wickham Point APOD.  |
| 11 May 2016   | Transferred to Yongah Hill IDC.   |

**Visa applications/case progression**

|                  |   |
|------------------|---|
| 19 April 2014    | Mr X was transferred from Manus Island RPC to Australia for medical treatment.  |
| 8 May 2014       | Mr X's representative requested that the Department of Immigration and Border Protection (DIBP) consider affording procedural fairness in his case prior to any determination being made to transfer him to a regional processing country. On 26 June 2014 DIBP responded advising it did not concede as a matter of law that procedural fairness was required. |
| 17 December 2014 | Mr X applied to the High Court (HC) for an injunction preventing his removal from Australia. On 6 February 2015 the HC referred the matter to the Federal Circuit Court (FCC).  |
| 1 June 2015      | The FCC dismissed the matter after Mr X withdrew his application.   |

<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.

|                   |   |
|-------------------|---|
| 20 July 2015      | Mr X filed legal proceedings in the HC against the Commonwealth and the Minister. DIBP advised on 8 October 2016 that the matter remained ongoing.  |
| 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. |
| 14 September 2016 | Mr X's case was referred on a ministerial submission for consideration under s 197AB for community detention. On 11 October 2016 the Minister declined to intervene.  |
| 8 October 2016    | DIBP advised that assessment of Mr X's protection claims would be progressed when he returned to Manus Island as he was not eligible to have his claims assessed in Australia.  |

### Health and welfare

International Health and Medical Services (IHMS) advised that in August 2013 Mr X reported a history of torture and trauma and received supportive therapy from the IHMS mental health team (MHT) as required. In May 2014 he was reviewed by a psychologist and diagnosed with anxiety and depression. An improvement in his condition was noted after he was prescribed with medication which he has continued to take. IHMS stated the MHT would monitor him as required. IHMS further advised that Mr X was reviewed and received treatment for physical health concerns including cardiac abnormalities, a leg abscess, and gastroenterological matters. At the time of IHMS's latest review, he was awaiting a specialist referral.

### Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 22 July 2013 after arriving in Australia aboard SIEV *Wagarville* 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 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.