

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).

Name	Mr X
Citizenship	Stateless (claimed), born in Country A
Year of birth	1993
Ombudsman ID	1002213-O
Date of DIBP's reports	4 November 2015 and 4 May 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

20 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 860 <i>Rosemead</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
22 October 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
25 October 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
9 November 2013	Returned to Australia for medical treatment 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. ²
4 November 2015	DIBP advised that it is exploring options to enable the resolution of Mr X's immigration status.
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.

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 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

International Health and Medical Services (IHMS) reported that Mr X has been monitored and treated for hepatitis B and tuberculosis (TB). IHMS advised that his last chest x-ray in May 2015 showed no abnormalities and his TB condition is considered resolved.

Mr X was also diagnosed with a genetic blood disorder which requires monitoring with regular blood tests. The general practitioner provided him with education about this condition.

IHMS advised that Mr X has disclosed a history of torture and trauma on several occasions but has declined specialist counselling. He is monitored by IHMS and no further mental health issues have been raised.

Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Mr X advised that four months ago his case manager had told him that his case was being submitted to the Minister but he had not received any further information. He said he would like to see his case manager more frequently so that he knows what is going on with his case.

Mr X advised he was taken to Manus Island RPC but was returned to Christmas Island IDC two weeks later for a medical review.

Mr X said he considered his mental health to be good, but he was unclear about his physical health. He said that he is not taking any medication but IHMS staff take him to external medical appointments. He said he did not understand the purpose of these appointments.

Mr X advised that his family are all in Country A except for his father who is in Country B. He said he only contacts his family twice a month because he finds it too upsetting to speak with them.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 20 October 2013 after arriving in Australia aboard *SIEV Rosemead* 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.