

## 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 Ms X who has remained in immigration detention for a cumulative period of more than 24 months (two years).

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1970
<b>Ombudsman ID</b>	1002275-O
<b>Date of DIBP's report</b>	30 December 2015
<b>Total days in detention</b>	730 (at date of DIBP's report)

### Detention history

14 December 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 871 <i>Catherine</i> . She was transferred to an Alternative Place of Detention (APOD), Christmas Island.
15 December 2013	Transferred to Christmas Island Immigration Detention Centre.
18 December 2013	Transferred to Berrimah House APOD.
24 December 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
9 January 2014	Returned to Australia and re-detained under s 189(1). She was transferred to Darwin Airport Lodge APOD.
10 January 2014	Transferred to Melbourne Immigration Transit Accommodation (ITA).
31 March 2016	Transferred to community detention.

### Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Ms 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 Ms X of the unintentional release of personal information. <sup>2</sup>

<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> 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.

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.
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### Health and welfare

24 December 2013 – ongoing	International Health and Medical Services (IHMS) advised that during her induction health assessment Ms X was identified to have human immunodeficiency virus (HIV). She was provided with counselling and referred to a specialist who prescribed her with antiretroviral treatment in February 2014. Ms X attends regular appointments at an infectious diseases clinic to manage her condition.
15 January 2014	Ms X presented to IHMS feeling distressed after discovering she was HIV positive. She was provided with psycho-education and referred for specialist counselling.
25 November 2014	Attended a mental health review and reported that her mood was deteriorating with prolonged detention.
June 2015	During a mental health review Ms X disclosed a history of torture and trauma but declined specialist counselling. She also reported sleeping difficulties and decreased appetite.
15 September 2015	Ms X reported that her mood, energy and appetite were decreasing and she became intermittently tearful. IHMS noted that she presented with anxiety and depression.
23 October 2015	Assessed by a psychiatrist who diagnosed Ms X with depression and detention fatigue. She was prescribed with medication.
26 November 2015	During her mental health review Ms X reported that she felt sad and was stressed and anxious about her medical issues and detention situation. She advised she had been experiencing sleeping difficulties but these had resolved after she was prescribed with medication.
23 December 2015	A DIBP Incident Report recorded that Ms X self-harmed by banging her head against a wall and an ambulance was called.

### Information provided by Ms X

During an interview with Ombudsman staff at Melbourne ITA on 24 March 2016 Ms X advised she had been transferred to Nauru RPC for 13 days before being transferred back to Australia for medical treatment after she was diagnosed with HIV.

Ms X stated she does not know what is happening with her immigration case or what the future holds for her. She was initially told she would be sent back to Nauru RPC but has since been told she may be transferred to the community. She advised she does not know why she does not have a visa yet.

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Ms X was detained on 14 December 2013 after arriving in Australia aboard SIEV *Catherine* and has been held in detention for a cumulative period of over two years with no processing of her 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 Ms X's claims to determine if she is found to engage Australia's protection obligations, it appears likely that she will remain in detention for an indefinite period.

The Ombudsman further notes DIBP's advice that because Ms X was transferred to an RPC but returned to immigration detention in Australia for medical reasons she remains liable for transfer back to an RPC on completion of her treatment.

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