

**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).

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1972 |
| Ombudsman ID | 1002448-O |
| Date of DIBP's reports | 14 July 2016 and 12 January 2017 |
| Total days in detention | 912 (at date of DIBP's latest report) |

Detention history

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| 25 July 2013 | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 810 <i>Megargel</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 1 August 2013 | Transferred to Christmas Island Immigration Detention Centre (IDC). |
| 19 December 2013 | Transferred to Manus Island Regional Processing Centre (RPC). ¹ |
| 18 March 2014 | Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation (ITA). |
| 22 March 2014 | Transferred to Manus Island RPC. |
| 13 December 2014 | Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD. |
| 14 December 2014 | Transferred to Maribyrnong IDC. |
| 6 March 2015 | Transferred to Melbourne ITA. |

Visa applications/case progression

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| <p>Mr X arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that Mr X is barred under ss 46A and 46B from lodging a valid protection visa application as a result of his method of arrival and transfer to an RPC.</p> <p>Mr X was returned to Australia for medical treatment on 18 March 2014 and 13 December 2014.</p> <p>The department has advised that under current policy settings Mr X is not eligible to have his protection claims assessed in Australia and remains liable for transfer back to an RPC on completion of his treatment.</p> |
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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.

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| 12 January 2017 | The department advised that Mr X's case was being assessed against the guidelines under s 197AB for consideration of a community detention placement. |
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Health and welfare

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| <p>International Health and Medical Services (IHMS) advised that Mr X sustained a head injury during the riot at Manus Island RPC in February 2014 and has required ongoing treatment for this condition and associated dental concerns. He was transferred to Australia on 18 March 2014 for a magnetic resonance imaging (MRI) scan which identified no abnormalities. Despite this, Mr X continued to experience unsteadiness associated with the head injury after his return to Manus Island RPC and was recommended for further specialist review. He was transferred to Australia in December 2014 and an MRI in April 2015 identified evidence of a brain haemorrhage. He was referred to a general neurology outpatient clinic. In October 2016 he was referred for a further MRI to detect any changes in his condition after he presented with ongoing tremors and gait disturbance. IHMS advised that Mr X's condition is currently stable and is continuously monitored.</p> <p>IHMS advised that Mr X disclosed a history of torture and trauma and was referred for specialist counselling. He was prescribed with antidepressant medication for the management of depression after reporting feelings of hopelessness and anxiety associated with his detention circumstances and the possibility of being returned to Manus Island RPC. He attends routine mental health reviews and continues to be supported by the mental health team.</p> | |
| 17 December 2014 – 26 June 2016 | Incident Reports recorded that Mr X fell or collapsed on nine occasions, once experiencing seizure like symptoms, and once requiring transfer to hospital. |

Other matters

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| 14 July 2016 | The department advised that Mr X is a plaintiff in ongoing High Court proceedings. |
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Ombudsman assessment/recommendation

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| <p>Mr X was detained on 25 July 2013 after arriving in Australia by sea and has been held in restricted detention for a cumulative period of more than two and a half years with no processing of his protection claims.</p> <p>Mr X was transferred to an RPC and returned to Australia for medical treatment twice. The department advised that because Mr X arrived after 13 July 2013 he remains liable for transfer back to an RPC on completion of his treatment.</p> <p>The Ombudsman notes the advice from IHMS that Mr X has a medical condition that requires ongoing treatment.</p> <p>The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose.</p> <p>The Ombudsman notes that under current policy settings Mr X is not eligible to have his protection claims assessed in Australia and that without an assessment of Mr X's claims it appears likely he will remain in restricted detention indefinitely.</p> <p>The Ombudsman recommends that Mr X's case be referred to the Minister for consideration of a community detention placement and that priority is given to resolving his immigration status.</p> |
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