

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 36 months (three years).

The first report 1003438 was tabled in Parliament on 15 April 2016. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Stateless (claimed), born in Country A
<b>Year of birth</b>	1974
<b>Ombudsman ID</b>	1002171-O
<b>Date of DIBP's reports</b>	1 April 2016 and 29 September 2016
<b>Total days in detention</b>	1094 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1003438), Mr X remained at Wickham Point Alternative Place of Detention (APOD).

11 May 2016	Transferred to Yongah Hill Immigration Detention Centre.
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### Recent visa applications/case progression

Mr X arrived in Australia by sea after 19 July 2013 and was transferred to a Regional Processing Centre (RPC). The Department of Immigration and Border Protection (the department) has advised that Mr X is barred under ss 46A and 46B of the *Migration Act 1958* from lodging a valid protection visa application as a result of his method of arrival and transfer to an RPC.

Mr X was returned to Australia for medical treatment<sup>1</sup> on 9 August 2014.

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.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X attended multiple physiotherapy sessions and was prescribed with pain relief medication for chronic back pain. He was also identified as a tuberculosis contact in 2013 and was monitored as per state policy with no further review required. A soft tissue mass that was identified in 2014 continues to be monitored with follow up radiological imaging scheduled in 2018. Additionally, Mr X received treatment for a nose condition and associated allergy issues.

IHMS further advised that Mr X presented with symptoms of detention fatigue and low mood and attended mental health support sessions regularly.

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<sup>1</sup> The department's 30 month review advised that Mr X was returned to Australia for medical treatment.

## Other matters

2 June 2016	The Australian Human Rights Commission (AHRC) released its preliminary views under s 27 of the <i>AHRC Act 1986</i> in relation to the complaint Mr X had previously lodged. It found Mr X's detention to be arbitrary, contrary to article 9 of the International Covenant on Civil and Political Rights. The department is yet to respond to the AHRC's preliminary views.
Mr X's application to the High Court (HC) challenging the Commonwealth's regional processing arrangements with Nauru remains ongoing. His application was stayed, pending the hearing of the lead matter of M68/2015. On 3 February 2016 the HC delivered judgment in M68/2015 finding in the Commonwealth's favour.	

## Information provided by Mr X

<p>During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Mr X advised that his back pain was worsening and that he found his treatment to be unsatisfactory. He also stated that he needed a nose operation to treat his nose condition, and that he had been told to expect a wait of about a month, but at the time had been waiting for over seven months.</p> <p>Mr X stated that he had become depressed during his detention, his parents had recently passed away, and that he didn't want to live any more. He stated that he had seen the IHMS mental health team many times, but he did not find them helpful.</p> <p>Mr X advised that he did not have any outside contact and said he had no close friends in detention.</p>
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## Ombudsman assessment/recommendation

<p>Mr X was detained on 19 August 2013 after arriving in Australia by sea and has been held in restricted detention for a cumulative period of more than three years with no processing of his protection claims.</p> <p>Mr X was transferred to an RPC and returned to Australia for medical treatment. 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 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 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 and recommends that Mr X be referred for consideration for a community detention placement.</p> <p>The Ombudsman again recommends that priority is given to resolving Mr X's immigration status.</p>
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