

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	Country A
Year of birth	1988
Ombudsman ID	1002498-O
Date of DIBP's reports	7 September 2016 and 8 March 2017
Total days in detention	912 (at date of DIBP's latest report)

Recent detention history

24 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 806 <i>Gurley</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
28 July 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
12 August 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
27 September 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point IDC.
29 September 2014	Transferred to Facility B.

Recent visa applications/case progression

<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 27 September 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>	
5 September 2016	Mr X was found not to meet the guidelines for referral to the Minister under s 197AB for a community detention placement.
8 March 2017	The department advised that Mr X has been identified for assessment against the guidelines for a referral to the Minister under s 197AB.

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.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received ongoing psychological and psychiatric counselling for management of multiple complex mental health concerns, including post-traumatic stress disorder and chronic pain. He attended further specialist torture and trauma counselling between January 2015 and June 2016 and was placed on high Psychological Support Program observations between 19 October 2016 and 25 November 2016 following multiple incidents of self-harm and food and fluid refusal.

In February 2016 Mr X's treating psychiatrist reported that his ongoing mental health concerns are related to his chronic pain and his condition may deteriorate if he is returned to Manus Island. IHMS further advised that the treating psychiatrist has recommended on multiple occasions that Mr X be placed in community detention as his prolonged detention in the restricted detention environment increases his risk of depression and suicide.

IHMS advised that Mr X experiences chronic pain related to an injury sustained in an incident on Manus Island. He was reviewed by a general surgeon and orthopaedic surgeon and no intervention was required. His condition continues to be monitored by a hospital pain clinic, orthopaedic team, physiotherapist and general practitioner.

IHMS further advised that Mr X has required treatment for additional physical health concerns, including a nasal obstruction and anterior cruciate ligament tear.

Ombudsman assessment/recommendation

Mr X was detained on 24 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.

Mr X was transferred to an RPC and returned to Australia for medical treatment. The department advised that because Mr X arrived after 19 July 2013 he remains liable for transfer back to an RPC on completion of his treatment.

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. The Ombudsman notes with serious concern Mr X's history of self-harm and advice from IHMS that his mental health may further deteriorate if he is returned to Manus Island. The Ombudsman further notes the repeated recommendations from the treating psychiatrist that Mr X be placed in community detention as the restricted detention environment increases his risk of depression and suicide.

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.

Given these concerns, the Ombudsman strongly recommends that the department refer Mr X's case to the Minister under s 197AB for consideration of a community detention placement.

The Ombudsman further recommends that priority is given to resolving Mr X's immigration status.