

**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 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	1975
Ombudsman ID	1002414-O
Date of DIBP's reports	25 May 2016 and 23 November 2016
Total days in detention	912 (at date of DIBP's latest report)

Recent detention history

26 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 813 <i>Ruffner</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
4 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
15 January 2014	Transferred to Manus Island Regional Processing Centre (RPC). ¹
15 November 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
11 May 2016	Transferred to Yongah Hill IDC.

Visa applications/case progression

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.

Mr X was returned to Australia for medical treatment on 15 November 2014.

The department 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.

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 has required extensive dental treatment and surgery due to injuries sustained in his home country. He continues to experience problems with this condition and has been advised that he should consider further treatment when he is released from detention. He reported left knee pain while at Manus Island RPC and was transferred to Port Moresby for an orthopaedic review. He was returned to Australia on 15 November 2014 and underwent knee surgery and rehabilitation therapy in February 2015.

IHMS advised that Mr X regularly engages with the mental health team and was referred for external specialist counselling for the management a history of torture and trauma and post-traumatic stress disorder associated with trauma experienced offshore. This trauma was further exacerbated following an assault at Manus Island RPC. He has been prescribed with antidepressant medication and presents with symptoms of detention fatigue. IHMS further advised that a psychiatrist reported in March 2015 that it would be extremely traumatising for Mr X to return to Manus Island RPC and that long term restricted detention would likely lead to significant deterioration in his mental state.

10 June 2015

An Incident Report recorded that Mr X self-harmed.

Ombudsman assessment/recommendation

Mr X was detained on 26 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 13 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 concern that IHMS has advised that Mr X's mental state is likely to be adversely affected by long term restricted detention and the possibility of being returned to Manus Island RPC.

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.

The Ombudsman recommends that Mr X be referred to the Minister for consideration of a community detention placement and that priority is given to resolving his immigration status.