

**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 36 months (three years).

Name	Mr X
Citizenship	Stateless (claimed), born in Country A
Year of birth	1991
Ombudsman ID	1002216-O
Date of DIBP's reports	4 November 2015, 4 May 2016 and 2 November 2016
Total days in detention	1094 (at date of DIBP's latest report)

Detention history

20 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 860 <i>Rosemead</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
22 October 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
24 October 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
9 November 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Christmas Island IDC.
29 April 2015	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point APOD.
11 May 2016	Transferred to Yongah Hill IDC.

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 9 November 2013.</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>	
14 October 2016	Mr X's case was referred on a ministerial submission for consideration under s 197AB for a community detention placement.

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.

2 November 2016	The department advised that assessment of Mr X's protection claims would be progressed when he returned to Manus Island as he was not eligible to have his protection claims assessed in Australia.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that in October 2015 Mr X was diagnosed with hepatitis B, and in May 2014 he was identified as a tuberculosis (TB) contact. IHMS reported that he has been monitored and managed by IHMS as per his hepatitis care plan and the State TB contact policy. IHMS advised that Mr X's TB condition has since resolved and it will continue to manage Mr X's chronic hepatitis B condition. An appointment at a gastroenterology clinic was scheduled for 8 December 2016.</p> <p>IHMS also advised that in May 2015 Mr X was diagnosed with arthritis in his foot joint and requires additional investigations for further management. IHMS advised on 26 September 2016 that he had been referred to an orthopaedic specialist with an appointment pending.</p> <p>In 2014 Mr X was also treated and monitored by the IHMS mental health team (MHT) for depressive symptoms, grief and situational anxiety, and threats of self-harm. The psychologist reported that these mental health issues had been resolved as of July 2014.</p> <p>In March 2016 Mr X self-referred to the MHT experiencing symptoms related to his history of torture and trauma, including poor appetite and sleep. He declined a referral for specialist counselling.</p> <p>Also in March 2016 Mr X presented to an IHMS general practitioner (GP) complaining of low mood and frustration from prolonged detention which he advised were affecting his appetite and sleeping patterns. After making threats of self-harm while attending the IHMS GP in April 2016 he was placed on Psychological Support Program Observations and referred to the IHMS psychologist who recommended medication. Mr X agreed to this but ceased taking the medication on 11 April 2016 due to side-effects. However, he continued with psychological counselling until 21 April 2016.</p>	
10 December 2014	An Incident Report recorded that Mr X threatened self-harm during an interview with case management.
7 April 2015	Incident Reports recorded that Mr X threatened self-harm after being assaulted by another detainee.

Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Mr X stated that he understood he was transferred from Manus Island RPC to Australia for medical reasons. He expressed concern that other medical transferees had been transferred to the community, and his case manager had not been able to provide him with an explanation as to why he remained in restricted detention.

Mr X said his main health concerns related to his knees and feet and that IHMS had not advised him of the outcome of an x-ray. He said he had requested medical treatment within the last month but had not received a response. Mr X said he was reluctant to complain as he did not want this to affect his immigration case, however, he was finding it very difficult to walk.

He also stated that he suffered from depression as a result of his prolonged detention and he was seeing a psychologist.

Mr X advised that he participated in English classes and activities depending on his mood. He explained that he was reluctant to participate in physical activities because he would be pushed around by other detainees.

Ombudsman assessment/recommendation

Mr X was detained on 20 October 2013 after arriving in Australia by sea and has been held in restricted detention for a cumulative period of over 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 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 strongly recommends that Mr X's case be referred to the Minister for consideration of a community detention placement.

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