

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 24 months (two years).

Name	Mr X
Citizenship	Stateless (claimed), born in Country A
Year of birth	1974
Ombudsman ID	1003438
Date of DIBP's report	1 October 2015
Total days in detention	730 (at date of DIBP's report)

Detention history

19 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 836 <i>Trinity</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
21 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
28 February 2014	Transferred to Northern IDC.
14 March 2014	Transferred to Wickham Point APOD.
6 June 2014	Transferred to Christmas Island IDC.
28 June 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
9 August 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD. ²

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Mr X is part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A.	
10 March 2016	DIBP confirmed that detainees who arrived in Australia after 19 July 2013 who were transferred to an RPC but returned to immigration detention in Australia for medical reasons remain liable for transfer back to an RPC on completion of their 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.

² DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X is accommodated in the single adult male compound at Wickham Point APOD.

Health and welfare

August 2013 – ongoing	<p>International Health and Medical Services (IHMS) advised that during his induction assessment Mr X disclosed a history of torture and trauma. He initially accepted a referral for specialist counselling but subsequently declined to attend. Mr X reported feeling frustrated about being held in detention and regularly accessed assistance from the mental health team and psychologists to discuss his frustrations.</p> <p>IHMS further advised that Mr X reported lower back pain which he attributed to a previous diagnosis of kidney stones.</p>
6 November 2013	Mr X was reported as a tuberculosis contact. Examinations identified no abnormal results.
2014 – ongoing	IHMS advised that Mr X underwent radiological examinations which identified degenerative changes to his lower back. This was diagnosed as being the cause of his ongoing back pain. Mr X was referred to orthopaedic specialists for review. IHMS further advised that this issue was ongoing for the duration of the report and is managed by his general practitioner (GP) with pain relief medication as required and encouragement to exercise.
12 February 2014 – ongoing	A computed tomography scan revealed that Mr X had an abdominal mass. A general surgeon diagnosed the mass as likely benign, but instructed that it be monitored for changes. Mr X was scheduled to attend a follow-up appointment in November 2015.
2 October 2014 – ongoing	Mr X reported to his GP that he had experienced a blocked nose and nasal drip for 10 years. He was reviewed by an ear nose and throat specialist who diagnosed him with a deviated septum and allergic rhinitis. He was prescribed with medication and asked to return for review and discussion of surgical options. This issue is monitored by Mr X's GP.
19 February 2015	Received steroid injections in his lower back. Mr X reported that they did not relieve his pain.
10 April 2015 – 15 May 2015	Attended five physiotherapy appointments.

Other matters

Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 5 March 2015 the AHRC requested a response from DIBP and on 29 April 2015 DIBP provided its response.

DIBP advised that Mr X had filed an application with the High Court of Australia challenging the Commonwealth's regional processing arrangements with Nauru.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 19 August 2013 after arriving in Australia aboard SIEV *Trinity* and has been held in restricted detention for a cumulative period of over two years with no processing of his protection claims.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. Without an assessment of Mr X's claims to determine if he is found to engage Australia's protection obligations, it appears likely that he will remain in restricted detention for an indefinite period.

The Ombudsman further notes DIBP's advice that because Mr X was transferred to an RPC but returned to immigration detention in Australia for medical reasons he remains liable for transfer back to an RPC on completion of his treatment.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X's immigration status.