

**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	1985
Ombudsman ID	1002467-O
Date of DIBP's reports	4 August 2016 and 2 February 2017
Total days in detention	912 (at date of DIBP's latest report)

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 (APOD), Christmas Island.
28 July 2013	Transferred to North West Point Immigration Detention Centre (IDC).
12 August 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
15 August 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation (ITA).
21 August 2014	Transferred to Wickham Point IDC.
23 August 2014	Transferred to Manus Island RPC.
1 November 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point IDC.
8 November 2014 – 24 April 2015	Transferred three times between Wickham Point IDC and Brisbane ITA.
24 April 2015	Transferred to Pine Rivers Private Hospital.
3 May 2015	Transferred to Airoldge International (designated APOD).
7 May 2015	Transferred to Wickham Point APOD.
7 July 2016	Transferred to Yongah Hill IDC.

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.

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 15 August 2014 and 1 November 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>	
14 June 2016	Found not to meet the guidelines for referral to the Minister under s 197AB for consideration of a community detention placement.
11 November 2016	Mr X's case was referred to the Minister for consideration under s 197AB.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has engaged with the mental health team (MHT) on a regular basis for the management of anxiety, post-traumatic stress disorder, a personality disorder, and thoughts of suicide and self-harm. He was transferred to Pine Rivers Hospital for an acute psychiatric admission in April 2015. On 7 October 2015 a treating psychologist recommended that Mr X's mental health would benefit from being transferred to a facility closer to his wife who resides in Brisbane. He continues to be monitored by a general practitioner (GP) and the MHT.</p> <p>IHMS further advised that Mr X has received treatment for a range of physical conditions including chronic pain in both knees, a fractured ankle and hyper perspiration. In June 2014 Mr X was transferred to Australia for treatment, and following a number of specialist appointments he underwent surgery for his knees in December 2014. Following ongoing pain, Mr X underwent further surgery in November 2015. IHMS advised that Mr X has expressed that he continues to have knee pain, but due to a GP's concerns over Mr X's history of drug dependence and his requests for increased doses of pain relief he was referred to the Chronic Pain Team at Royal Darwin Hospital in April 2016 for ongoing management. Mr X was referred for specialist review scheduled for 29 March 2017.</p>	
6 April 2015	An Incident Report recorded that Mr X refused food and fluid as a form of protest in relation to IHMS services.
9 April 2015	An Incident Report recorded that an ambulance was called for concerns regarding Mr X's health.
2 May 2015 and 3 May 2015	Incident Reports recorded that Mr X self-harmed on two occasions.
7 May 2015	An Incident Report recorded that Mr X threatened self-harm.
3 July 2015	Incident Reports recorded that Mr X refused food and fluid as a form of protest and threatened self-harm.
8 July 2015	An Incident Report recorded that Mr X was transferred to hospital for medical treatment.

Detention incidents

20 June 2015	An Incident Report recorded that Mr X allegedly threatened a Serco officer. The Police declined to investigate the matter.
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Other Matters

In November 2015 Mr X married Ms Y, an Australian citizen.
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Information provided by Ms Y on behalf of Mr X

<p>Ms Y contacted the Ombudsman's office on 17 January 2017 and provided further information about Mr X's circumstances. Ms Y advised that during his initial period of detention at Manus Island RPC as well as when he was first returned to Australia, Mr X had restricted mobility due to his knee injuries.</p> <p>Ms Y further advised that Mr X experiences hyper perspiration on his hands and feet which paired with knee and ankle injuries results in considerable instability. She claimed that Mr X experiences chronic pain in his knees and that he is only offered Panadol for pain relief and is unable to have items such as wheat bags or gel packs.</p> <p>Additionally, she advised that in December 2014 upon review of his ankle fracture, Mr X was advised that he requires a special walking boot and physiotherapy, neither of which have been provided.</p> <p>Ms Y advised that Mr X's significant and persistent physical injuries have affected his mental health. Ms Y suggested that Mr X would benefit from a community detention placement, preferably in Brisbane with her so that she can provide him with support for both his physical and mental health needs.</p>

Ombudsman assessment/recommendation

<p>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.</p> <p>Mr X was transferred to an RPC and returned to Australia twice 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. The Ombudsman notes with concern that Mr X suffers from significant physical and mental health concerns.</p> <p>The Ombudsman strongly recommends that Mr X be referred to the Minister for consideration of a community detention placement with his wife in Brisbane.</p> <p>The Ombudsman further recommends that priority is given to resolving Mr X's immigration status.</p>
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