

**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	1966
Ombudsman ID	1002397-O
Date of DIBP's reports	9 May 2016 and 7 November 2016
Total days in detention	912 (at date of DIBP's latest report)

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 (SIEV) 814 <i>Sipsey</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
4 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
28 June 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
11 April 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation (ITA).
28 July 2016	Transferred to Melbourne ITA.

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 of the <i>Migration Act 1958</i> 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 11 April 2015.</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>	
12 March 2014	The department notified Mr X of the unintentional release of personal information. ²

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 In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

22 September 2016	The department commenced an assessment of Mr X's case under the guidelines for referral to the Minister under s 197B.
2 November 2016	The department found that Mr X met the guidelines for referral to the Minister. On 7 November 2016 the department advised that the matter remained ongoing.

Health and welfare

International Health and Medical Services (IHMS) advised that on 10 April 2015 Mr X presented with chest pain and required emergency transfer to Australia for urgent treatment. He was admitted into a hospital in Australia on 11 April 2015 for surgery for acute coronary syndrome involving stent insertions. The procedure was reported as successful and Mr X was discharged into the care of IHMS on 14 April 2015.

An incident report recorded that on 19 April 2015 an ambulance was called when Mr X complained of chest pains and he was taken to hospital. The cardiologist reviewed Mr X on 30 April 2015 and ongoing management has included medication, weekly observations and blood tests to monitor cholesterol levels. IHMS stated that it and the cardiac specialist continued to manage Mr X's cardiac health needs.

IHMS advised that Mr X also required ongoing treatment for another medical condition.

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 the advice from IHMS that Mr X has a medical condition that requires ongoing 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 detention indefinitely.

The Ombudsman notes that Mr X has met the guidelines for referral to the Minister under s 197AB.

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