

**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	1968
Ombudsman ID	1002399-O
Date of DIBP's reports	9 May 2016 and 8 November 2016 ¹
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).
25 October 2013	Transferred to Manus Island Regional Processing Centre (RPC). ²
14 November 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Christmas Island IDC.
29 April 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 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 14 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>	
8 November 2016	The department advised it was continuing to explore options to manage Mr X's immigration status.

¹ The department advised that due to administrative error, it did not send Mr X's 24-month report to the Ombudsman, which should have been received by 30 November 2015.

² 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 was previously diagnosed with hepatitis B but in November 2015 it was confirmed he no longer had this condition. IHMS stated that the liver specialist recommended that Mr X undergo six monthly to yearly blood tests and the IMHS general practitioner was to continue to monitor Mr X's health in line with specialist's recommendations.

IHMS further advised that from March 2016 Mr X was found to be showing signs of detention fatigue.

The department did not provide an IHMS Health Summary Report for Mr X for the period 20 October 2013 to 16 October 2015.

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 more than two 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 detention indefinitely.

The Ombudsman notes that Mr X is currently being held in restricted detention and strongly recommends that he 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.

The Ombudsman notes that s 486N(1)(b) records the Secretary of the department's obligation to report to the Commonwealth Ombudsman within 21 days after the detention reporting time.

In the case of the department's review on Mr X, the Ombudsman notes with concern that the department advised that it did not meet its statutory reporting timeframes due to an administrative error.