

**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	1984
Ombudsman ID	1002421-O
Date of DIBP's reports	1 June 2016 and 30 November 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

25 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 810 <i>Megargel</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
1 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
19 December 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
27 October 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation.
18 November 2014	Transferred to Villawood 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 27 October 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>	
20 May 2016	Mr X's case was referred on a ministerial submission under s 197AB for consideration of a community detention placement. The Minister declined to intervene on 23 June 2016.

Other legal matters

1 June 2016	The department advised that Mr X is a plaintiff in ongoing court proceedings.
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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.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has been diagnosed with bipolar affective disorder with psychotic features and is regularly reviewed by IHMS psychiatrists and the mental health team (MHT). He was returned to Australia on 27 October 2014 after his mental health deteriorated and was admitted to a psychiatric hospital for treatment. In March 2016 he was reviewed by an IHMS psychiatrist who noted that Mr X was anxious and worried about being returned to Manus Island RPC. On 1 June 2016 he was admitted to a psychiatric hospital following a psychotic episode and was discharged on 23 June 2016. On 2 August 2016 he was involuntarily admitted to hospital following deterioration in his condition due to non-compliance with his medication. Upon review in October 2016 a psychiatrist recommended he attend weekly counselling with the MHT to improve his understanding of his condition and treatment. Mr X disclosed a history of torture and trauma in September 2013 but declined a referral for specialist counselling.</p> <p>IHMS further advised that Mr X suffered a shoulder injury in his home country. In November 2014 an ultrasound identified a nerve condition and he was referred for physiotherapy and prescribed with anti-inflammatory medication.</p>	
27 October 2014 – 18 November 2014	Admitted to a psychiatric hospital.
12 May 2015 – 2 August 2016	Incident Reports recorded that Mr X was taken to hospital by ambulance for emergency treatment on five occasions.
1 – 23 June 2016 and 6 – 25 November 2016	Admitted involuntarily to a psychiatric hospital.

Ombudsman assessment/recommendation

<p>Mr X was detained on 25 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 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 the advice from IHMS that Mr X has a medical condition that requires ongoing treatment.</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.</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 strongly recommends that Mr X's case is referred to the Minister for consideration of a community detention placement and that priority is given to resolving Mr X's immigration status.</p>
