

**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 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	1959
Ombudsman ID	1002404-O
Date of DIBP's reports	16 May 2016 and 12 November 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

20 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 798 <i>Tibbie</i> . He was transferred to Christmas Island Immigration Detention Centre (IDC). Mr X arrived with his wife, Ms Y and their adult daughter, Ms Z who are the subject of Ombudsman report 1002505-O.
18 September 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
7 February 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation (ITA).
2 March 2014	Transferred to Nauru RPC.
11 May 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane ITA.
21 August 2014	Transferred to Wickham Point Alternative Place of Detention (APOD).
23 August 2014	Transferred to Nauru RPC.
3 September 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane ITA.
12 March 2015	Transferred to Wickham Point APOD.
13 March 2015	Transferred to Nauru RPC.
27 May 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
2 July 2015	Transferred to Melbourne ITA.
16 September 2016	Transferred to community detention where he resides with his wife Ms Y and adult daughter Ms Z.

Visa applications/case progression

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.

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 *Migration Act 1958* from lodging a valid protection visa application as a result of his method of arrival and transfer to an RPC.

Mr X was returned to Australia for medical treatment on 7 February 2014, 11 May 2014, 3 September 2014 and 27 May 2015.

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.

Other legal matters

14 July 2015	Mr X appeared at a Magistrates Court after being charged in relation to possessing a weapon in a detention centre.
18 September 2015	The charge(s) against Mr X were withdrawn.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X underwent treatment and/or counselling for mental health conditions including narcissistic personality disorder, depression, insomnia, and a history of torture and trauma. IHMS stated that Mr X was hospitalised for mental health intervention on numerous occasions, the last time being in 2015.

At a review with an IHMS general practitioner (GP) on 16 August 2016 Mr X indicated he did not wish to live anymore but had no thoughts of suicide or self-harm. His risk assessment was also deemed to be low. The GP was reported to have had multiple conversations with Mr X about his poor motivation regarding his physical and mental health issues and he was referred for psychotherapy.

Incident Reports recorded that Mr X threatened self-harm on a number of occasions and on one occasion during a psychology appointment threatened to end his life.

IHMS advised that Mr X underwent investigation and/or treatment for physical health concerns including chronic obstructive pulmonary disease, gastroenterological matters, chest pain/ischaemic heart disease, tendon swelling in a finger, degenerative disc changes with left and right prolapse, sciatica, and corneal degeneration. In October 2016 a community GP made a request to the department for Mr X to receive a nebuliser machine. An appointment with a specialist in relation to Mr X's gastroenterological matters was also pending. Additionally Mr X was on a waiting list for an endoscopy.

Other matters

8 July 2015	A complaint was lodged with the Commonwealth Ombudsman's office on behalf of Mr X and others. After investigation the complaint was finalised on 20 July 2015.
15 July 2015	The Australian Human Rights Commission (AHRC) informed the department that it was investigating a complaint made on behalf of Mr X and others. On 20 July 2015 the AHRC informed the department that investigation had been finalised.

12 October 2015	The AHRC informed the department of a further investigation in relation to Mr X. On 20 May 2016 the AHRC informed the department that investigation had been finalised.
16 May 2016	The department advised that Mr X has a second daughter, Ms P, and a son, Mr Q, who reside in the Australian community on Bridging visas.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 20 July 2013 after arriving in Australia aboard SIEV *Tibbie* and has been held in restricted detention for a cumulative period of over two and a half 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 the department’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 notes that Mr X has been transferred to Nauru RPC and back to Australia on four occasions.

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