

**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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1991
<b>Ombudsman ID</b>	1002385-O
<b>Date of DIBP's reports</b>	5 May 2016 <sup>1</sup> and 18 September 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

30 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 803 <i>Dotelle</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
5 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
22 August 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>2</sup>
13 April 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation.
9 October 2014	Transferred to Wickham Point IDC.
9 January 2015	Transferred to Wickham Point APOD.
15 December 2015	Transferred to community detention.

**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 13 April 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>	
1 December 2015	The Minister intervened under s 197AB to allow Mr X to reside in community detention.

<sup>1</sup> The department's 24-month review on Mr X was due in April 2016. The department advised that the delay in provision of this review was due to a system failure.

<sup>2</sup> 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 has extensive jaw injuries. In February 2014 he sustained further injury to his jaw after an alleged assault at Manus Island RPC. X-rays identified a deformity and he was transferred to Australia where he was reviewed by a specialist who recommended surgery and physiotherapy. He attended multiple reviews with a maxillofacial team and underwent surgery in October 2015 which improved his jaw movement. His condition is monitored by a general practitioner and managed with pain relief medication.

IHMS further advised that upon his arrival in Australia Mr X disclosed a significant history of depression and self-harm. He was referred for specialist counselling and prescribed with antidepressant medication and in December 2013 he was diagnosed with post-traumatic stress disorder and depression.

Mr X attended two specialist counselling sessions in September 2014 but declined to attend further offsite counselling sessions. IHMS advised that he engaged with the mental health team at times of increased distress and was closely monitored on two occasions following suicide attempts. Since his transfer to community detention Mr X has not presented with any mental health concerns.

11 April 2015	An Incident Report recorded that Mr X self-harmed.
---------------	--

## Other matters

5 May 2016	The department advised that Mr X was a plaintiff in ongoing court proceedings.
------------	--

## Ombudsman assessment/recommendation

Mr X was detained on 30 July 2013 after arriving in Australia by sea and has been held in 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 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 recommends that priority is given to resolving Mr X's immigration status.