

**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, born in Country B
<b>Year of birth</b>	1971
<b>Ombudsman ID</b>	1002475-O
<b>Date of DIBP's reports</b>	22 August 2016 and 20 February 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

4 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 821 <i>Eldridge</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
5 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
4 September 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>
25 March 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation.
5 April 2014	Transferred to Manus Island RPC.
4 October 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point IDC.
5 October 2014 – 28 May 2016	Transferred four times between various immigration detention facilities.
6 January 2017	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 25 March 2014 and 4 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>	
23 June 2015	Mr X lodged a Bridging visa application. On 26 June 2016 he was notified that his application was invalid.

<sup>1</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.

28 September 2015	Mr X's representative requested ministerial intervention under ss 197AB and 198AE for consideration of a community detention placement and exemption from transfer to an RPC.
23 December 2015	Mr X's requests under ss 197AB and 198AE were finalised without referral to the Minister.
20 December 2016	The Minister intervened under s 197AB, following a further referral for ministerial intervention, to allow Mr X to reside in community detention.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment and attended counselling for multiple complex mental health conditions, including post-traumatic stress disorder and a history of torture and trauma. He was assessed by a psychiatrist and prescribed with antidepressant medication after presenting with depression and anxiety related to his detention at an RPC and situational stress.

Mr X was admitted to hospital from 3 August to 8 August 2016 and reviewed by the mental health team after attempting suicide. A psychiatrist advised that Mr X was at chronic risk of impulsive suicide and a psychologist recommended that his restricted detention placement be reviewed. He was admitted to hospital again on 29 November 2016 for psychological support following a deterioration in his mental health related to his prolonged detention and separation from his family. IHMS advised that he continued to be monitored by the mental health team and attended regular psychiatric reviews.

IHMS further advised that Mr X received treatment for multiple physical health conditions, including cardiovascular abnormalities and lower back pain. He was reviewed by a cardiologist and neurosurgeon and continued to be monitored by the IHMS medical team.

### Other matters

Mr X's brother, Mr Y, is an Australian citizen, and their parents, Mr Z and Ms P, arrived in Australia on 6 May 2016 under the Special Humanitarian Programme.

### Ombudsman assessment/recommendation

Mr X was detained on 4 August 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 19 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 with serious concern the reported negative impact of Mr X's ongoing detention and uncertain immigration pathway on his mental health.

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.