

## ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment 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>	1989
<b>Ombudsman ID</b>	1002447-O
<b>Date of DIBP's reviews</b>	14 July 2016 and 10 January 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

14 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
17 September 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
20 December 2013	Transferred to Northern IDC.
10 January 2014	Transferred to Christmas Island IDC.
28 March 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
24 January 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
25 January 2015	Transferred to Brisbane Immigration Transit Accommodation.
7 August 2015	Transferred to Wickham Point APOD.
11 May 2016	Transferred to Yongah Hill IDC.
The Department of Immigration and Border Protection (the department) advised that Mr X has since been transferred to community detention.	

### Visa applications/case progression

Mr X arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. 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.

Mr X was returned to Australia for medical treatment on 24 January 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.

<sup>1</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

10 January 2017	<p>The department advised that Mr X has completed his medical treatment.</p> <p>The department further advised that Mr X was a plaintiff in a matter before the High Court (HC).<sup>2</sup> Following a HC decision that was in favour of the Minister, Mr X filed summons seeking leave to amend his proceedings. These proceedings remain before the HC and as a result Mr X's return to Nauru RPC remains on hold.</p>
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### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has received treatment and attended several specialist appointments for the management of urological concerns. He was treated for a related communicable disease, however symptoms of pain have persisted, with no formal diagnosis. At the time of the department's latest review Mr X was awaiting a second opinion with an appointment date yet to be scheduled.</p> <p>IHMS further advised that Mr X disclosed a history of torture and trauma and engaged with specialist counselling over a three month period. He was prescribed with sleeping medication for sleep concerns with no further mental health concerns reported.</p>	
15 November 2013	An Incident Report recorded that Mr X refused food and fluid as a form of protest in relation to his medical treatment.
9 July 2015	An Incident Report recorded Mr X threatened self-harm.

### Ombudsman assessment/recommendation

<p>Mr X was detained on 14 September 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.</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 19 July 2013 he remains liable for transfer back to an RPC on completion of his treatment. The Ombudsman notes advice from the department that Mr X's medical treatment has been completed, and that his return to Nauru RPC remains on hold until his legal proceedings are finalised.</p> <p>The Ombudsman further notes the advice from IHMS that Mr X has ongoing medical concerns and that at the time of the department's latest review Mr X was awaiting a second opinion.</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 recommends that priority is given to resolving Mr X's immigration status.</p>
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<sup>2</sup> *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2016] HCA 1.