

# ASSESSMENT BY THE COMMONWEALTH 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 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1996
<b>Ombudsman ID</b>	1002804-O
<b>Date of DIBP's report</b>	22 November 2017
<b>Total days in detention</b>	730 (at date of DIBP's report)

## Detention history

31 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to Christmas Island Immigration Detention Centre.
19 August 2013	Transferred to an Alternative Place of Detention, Christmas Island.
14 February 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
7 June 2016	Returned to Australia and re-detained under s 189(1). He was transferred to Facility B.
13 April 2017	Placed in the community. <sup>2</sup>

## 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 in Australia as a result of his method of arrival and transfer to an RPC.</p> <p>Mr X was returned to Australia from an RPC for medical treatment on 7 June 2016.</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>	
13 March 2014	The department notified Mr X of the unintentional release of personal information. <sup>3</sup>
10 April 2017	The Minister intervened under s 197AB to grant Mr X a community placement.

<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.

<sup>2</sup> Mr X was granted a placement in the community under s 197AB and remains in immigration detention.

<sup>3</sup> In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

22 November 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.
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**Other legal matters**

22 November 2017	The department advised that Mr X has ongoing legal matters in the High Court.
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**Health and welfare**

<p>International Health and Medical Services (IHMS) advised that Mr X was diagnosed with multiple complex mental health conditions, including a major depressive disorder, a chronic stress disorder and post-traumatic stress disorder. Mr X required ongoing mental health support after being allegedly assaulted in September 2013 at Nauru RPC. IHMS advised that he was a minor at the time and reported experiencing nightmares, rumination, fear and distress following the incident.</p> <p>In May 2014 Mr X was reviewed by a psychiatrist and presented with symptoms of low motivation, tiredness and social withdrawal. He was prescribed with antidepressant medication and attended psychological counselling and improvements in his symptoms were noted. His mental health deteriorated in April 2015 after he was separated from his sister due to her transfer to Australia for medical reasons. In February 2016 Mr X was closely monitored by detention centre staff after threatening self-harm and treating psychiatrists recommended that he be reunified with his sister. In June 2016 he was returned to Australia and admitted to a psychiatric hospital after displaying suicidal behaviour. A hospital consultant reported that Mr X had a vulnerable personality and recommended that reunification with his sister was an important factor for improving Mr X's wellbeing. Following his placement in the community, Mr X continued to be monitored by a general practitioner (GP), psychologist and psychiatrist.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health concerns, including back pain, dental problems and an autoimmune disease. In July 2017 he was reviewed by a GP and prescribed with medication for symptoms of an autoimmune disease. The following month Mr X was referred to a specialist after it was observed that his condition had worsened. IHMS also advised that he attended physiotherapy and was prescribed with medication for ongoing back pain. Mr X was reviewed by a dentist who recommended that he be provided with dentures and IHMS advised that it had approved this request.</p>	
7 June 2016 – 27 July 2016	Admitted to a psychiatric hospital.

**Detention incidents**

21 September 2013	An Incident Report recorded that Mr X was allegedly assaulted by members of his extended family at Nauru RPC. Mr X was subsequently treated by the IHMS medical team for minor cuts and bruises and the people who allegedly assaulted him were transferred to a separate compound.
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**Other matters**

<p>Mr X's sister, Ms Y, and her husband, Mr Z, were temporarily transferred to Australia for medical treatment on 17 April 2015. Ms Y and her family are placed in the community in State C and are the subjects of Ombudsman assessment 1002510-O.</p>	
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### **Ombudsman assessment/recommendation**

Mr X was detained on 31 July 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two years.

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 department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical 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.

IHMS advised that Mr X has been diagnosed with multiple complex mental health concerns that require ongoing treatment and monitoring. A hospital consultant reported that Mr X has a vulnerable personality and that support from his sister is an important factor for improving his wellbeing.

The Ombudsman notes that under current policy settings Mr X is not eligible to have his protection claims assessed by Australia and that without an assessment of Mr X's claims it appears likely he will remain in detention for a prolonged period.

The Ombudsman recommends that priority is given to resolving Mr X's immigration status.