

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).

Name	Mr X
Citizenship	Country A
Year of birth	1972
Ombudsman ID	1002459-O
Date of DIBP's reviews	23 July 2016 and 23 January 2017
Total days in detention	914 (at date of DIBP's latest review)

Detention history

18 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving by sea. He was transferred to Northern Immigration Detention Centre (IDC).
4 September 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
10 August 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation (ITA).
9 October 2014 – 20 November 2015	Transferred six times between Wickham Point Alternative Place of Detention and Brisbane ITA.
11 May 2016	Transferred to Yongah Hill IDC.
20 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) 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 10 August 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>	
19 December 2016	The Minister intervened under s 197AB to allow Mr X to reside in community detention.

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

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and attended specialist counselling. He was reviewed by a psychiatrist and diagnosed with post-traumatic stress disorder and narcissistic personality disorder and prescribed with medication. While in restricted detention he was placed on Supportive Monitoring and Engagement observations on multiple occasions following safety concerns. In October 2014 he was admitted to hospital for psychiatric treatment. His condition continued to be monitored by the mental health team.</p> <p>IHMS further advised that Mr X was returned to Australia for an orthopaedic review and surgical procedure to manage a knee condition. In May 2016 he was referred for a consultation with an orthopaedic surgeon and attended physiotherapy following ongoing pain. Mr X attended further physiotherapy for chronic lower back pain and received treatment for a shoulder injury and minor health concerns.</p>	
October 2014 – December 2014	Admitted to hospital for psychiatric treatment.
27 October 2015	An Incident Report recorded that Mr X threatened self-harm and suicide.
14 November 2015	An Incident Report recorded that Mr X self-harmed.

Detention incidents

3 September 2014 – 29 October 2015	Incident Reports recorded that Mr X displayed non-compliant, aggressive and abusive behaviour towards detention centre staff on five occasions.
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Ombudsman assessment/recommendation

<p>Mr X was detained on 18 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.</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.</p> <p>The Ombudsman notes the advice from IHMS that Mr X has a medical condition that requires ongoing treatment.</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. The Ombudsman notes with concern Mr X's history of mental health concerns including expressed suicide ideation and threats of self-harm.</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 detention indefinitely.</p> <p>The Ombudsman recommends that priority is given to resolving Mr X's immigration status.</p>
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