

**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 Ms X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1002507-O
Date of DIBP's reports	20 September 2016 and 21 March 2017
Total days in detention	919 (at date of DIBP's latest report)

Detention history

12 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 857 <i>Orrville</i> . She was transferred to an Alternative Place of Detention, Christmas Island.
13 October 2013	Transferred to Christmas Island Immigration Detention Centre.
15 October 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
24 September 2014	Returned to Australia and re-detained under s 189(1). She was transferred to Brisbane Immigration Transit Accommodation.
16 February 2016	Transferred to community detention.

Visa applications/case progression

<p>Ms 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 Ms X is barred under ss 46A and 46B from lodging a valid protection visa application as a result of her method of arrival and transfer to an RPC.</p> <p>Ms X was returned to Australia for medical treatment on 24 September 2014.</p> <p>The department has advised that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to an RPC on completion of her treatment.</p>	
4 February 2016	The Minister intervened under s 197AB to allow Ms 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 reporting under s 486N.

Health and welfare

International Health and Medical Services (IHMS) advised that Ms X received treatment for complex mental health concerns, including schizophrenia and multiple incidents of significant self-harm. Prior to being returned to Australia, Ms X was admitted to an IHMS clinic on multiple occasions following episodes of psychosis.

On 24 September 2014 Ms X was returned to Australia and admitted to a psychiatric hospital for management of schizophrenia. A treating psychiatrist advised that she was at risk of worsening mood and deteriorating mental health given the ongoing stress of restricted detention.

Following her transfer to community detention, Ms X continued to be monitored by a general practitioner, psychiatrist, psychologist and attended specialist counselling. In June 2016 a treating psychiatrist advised that Ms X's schizophrenia was in remission but she was presenting with symptoms of post-traumatic stress disorder and depression. In November 2016 a treating psychiatrist reported that she presented with low mood and anxiety related to her immigration status and a counsellor noted that she experiences high levels of distress. The counsellor recommended that she be placed with her then fiancé in the community to lower her risk of self-harm.

On 20 January 2017 an IHMS Medical Director advised that Ms X is currently clinically inappropriate for placement at an RPC due to complex mental health concerns.

IHMS further advised that Ms X received counselling and treatment after experiencing a miscarriage and gynaecological concerns.

1 – 5 January 2014	Monitored by the mental health team after refusing food and fluid as a form of protest.
24 September 2014 – 2 December 2014	Admitted to a psychiatric hospital.
7 October 2014	An Incident Report recorded that Ms X self-harmed during a hospital admission.
27 May 2015 – 30 July 2015	Admitted to a psychiatric hospital following an incident of self-harm associated with auditory hallucinations.
3 – 9 February 2016	Admitted to hospital following an incident of self-harm.
18 November 2016	An Incident Report recorded that Ms X was admitted to hospital after experiencing a panic attack during an appointment with her case manager.

Other matters

Ms X married Mr Y on 17 December 2016. Mr Y arrived in Australia by sea on 11 August 2013 and resides in the community on a Bridging visa.

Ms X's brother, Mr Z, arrived in Australia by sea on 9 September 2012 and resides in the community on a Bridging visa. He is the subject of Ombudsman report 1003408.

Ombudsman assessment/recommendation

Ms X was detained on 12 October 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 her protection claims.

Ms X was transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her 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 concern Ms X's history of complex mental health concerns and incidents of self-harm and the reported negative impact of prolonged detention on her mental health. The Ombudsman further notes advice from IHMS that Ms X's risk of self-harm may be reduced if she is placed with her husband in the community.

The Ombudsman notes that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and that without an assessment of Ms X's claims it appears likely she will remain in detention indefinitely.

Given Ms X's history of self-harm and mental health concerns, the Ombudsman recommends that the department consider changing Ms X's community detention address to allow her to reside with her husband.

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