

**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 restricted immigration detention for a cumulative period of more than 24 months (two years).

Name	Ms X
Citizenship	Country A
Year of birth	22 February 1985
Ombudsman ID	1002532-O
Date of DIBP's report	20 October 2016
Total days in detention	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 aboard Suspected Illegal Entry Vessel (SIEV) 815 <i>Toxey</i> . She was transferred to an Alternative Place of Detention (APOD), Christmas Island.
7 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
30 April 2015	Returned to Australia and re-detained under s 189(1). She was transferred to Brisbane Immigration Transit Accommodation (ITA).
7 August 2015	Transferred to Wickham Point APOD.
11 February 2016	Transferred to Brisbane ITA.

Visa applications/case progression

30 April 2015	Ms X was transferred from Nauru RPC to Australia for medical treatment.
16 March 2016	The Department of Immigration and Border Protection (DIBP) confirmed that detainees who arrived in Australia after 19 July 2013 who were transferred to an RPC but returned to immigration detention in Australia for medical reasons remain liable for transfer back to an RPC on completion of their treatment.
27 April 2016	The Minister declined to intervene under s 197AB to allow Ms X to reside in community detention.
20 October 2016	DIBP advised that Ms X had been identified for assessment against the guidelines under s 197AB for possible referral to the Minister for a community detention placement.

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

DIBP advised that Ms X was transferred to Australia for medical treatment of appendicitis.

International Health and Medical Services (IHMS) advised that upon her return to Australia Ms X presented with a range mental health concerns following an alleged sexual assault on Nauru. IHMS also noted that Ms X has a history of self-harm.

In February 2016 Ms X was diagnosed with post-traumatic stress disorder (PTSD) and major depressive disorder and admitted to a psychiatric hospital. Her treating psychiatrist strongly recommended given her history of sexual assault in detention that she be released into community detention upon completion of her treatment.

Ms X received inpatient treatment for seven weeks and on release was returned to a detention centre.

Ms X continues to display symptoms of PTSD and depression, including extreme anxiety and suicidal ideation, and has been placed on Supportive Monitoring and Engagement observations as clinically required. Ms X has been prescribed medication and counselling and is compliant with her treatment plan. In July 2016 her IHMS psychiatrist confirmed that her mental state is likely to remain distressed while she remains in detention.

Ms X has also received treatment for appendicitis, chronic back and pelvic pain and gynaecological issues. Her gynaecologist has advised that her pelvic pain may be a psychological component of her sexual assault. Ms X is awaiting confirmation of an appointment date for a further gynaecological review.

24 November 2013	A DIBP incident report recorded that Ms X self-harmed.
11 February 2015 – 11 April 2015	Admitted to a psychiatric hospital.

Other matters

Ms X's fiancé, Mr Y, arrived in Australia by sea on 9 August 2013 and was transferred to Nauru RPC.

Ombudsman assessment/recommendation

Ms X was detained on 31 July 2013 after arriving in Australia by sea and has been held in restricted detention for a cumulative period of more than two years with no processing of her protection claims.

Ms X was transferred to an RPC and returned to Australia for medical treatment. DIBP advised that because Ms X arrived after 13 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 detention may pose. The Ombudsman notes with concern that Ms X has significant physical and mental health conditions and notwithstanding her psychiatrist's recommendation that she be released into community detention, the Minister declined to intervene in her case in April 2016.

The Ombudsman notes that at the date of its review DIBP had identified Ms X for assessment against the guidelines under s 197AB for a possible referral to the Minister for a community detention placement.

The Ombudsman recommends that DIBP prioritise its assessment of Ms X's case against the s 197AB guidelines.

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 restricted detention indefinitely.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Ms X's immigration status.