

**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 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	1987
Ombudsman ID	1002468-O
Date of DIBP's reports	8 August 2016 and 6 February 2017
Total days in detention	914 (at date of DIBP's latest report)

Detention history

19 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 835 <i>Saginaw</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
20 August 2013	Transferred to Christmas Island Immigration Detention Centre.
11 March 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 February 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
28 February 2015	Transferred to Melbourne Immigration Transit Accommodation.
April 2017	The Department of Immigration and Border Protection (the department) advised that Mr X was 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 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.</p> <p>Mr X was returned to Australia for medical treatment on 27 February 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>	
6 February 2017	The department advised that Mr X's case was being considered for referral to the Minister under s 197AB 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

International Health and Medical Services (IHMS) advised that Mr X attended regular specialist counselling and was prescribed with antidepressant medication for management of depression, post-traumatic stress disorder and a history of torture and trauma. He was placed on Psychological Support Program observations in early 2015 following incidents of self-harm and was monitored by the IHMS Mental Health Team.

On 5 August 2016 a psychologist recommended that Mr X be transferred to community detention as his psychological functioning would further deteriorate if he remained in restricted detention. On 22 December 2016 an IHMS general practitioner (GP) advised that Mr X's mental health was unlikely to improve while he remained in restricted detention.

IHMS further advised that Mr X attended physiotherapy and received treatment for multiple physical health conditions, including chronic back pain, knee pain and hand numbness. He underwent spinal surgery on 7 June 2016 and his condition continued to be monitored by a GP, pain management clinic and orthopaedic spine specialist.

Other matters

Mr X arrived in Australia with his cousin, Mr Y, and his cousin's daughter, Ms Z, who are the subject of Ombudsman Report 1002492-O and reside in community detention.

Ombudsman assessment/recommendation

Mr X was detained on 19 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.

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 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 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.

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