

**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 restricted 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>	1989
<b>Ombudsman ID</b>	1002606-O
<b>Date of DIBP's report</b>	27 February 2017
<b>Total days in detention</b>	731 (at date of DIBP's 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> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
13 October 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
16 October 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>
27 February 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
1 September 2015	Transferred to Brisbane Immigration Transit Accommodation (ITA).
3 November 2015	Transferred to Wickham Point APOD.
30 June 2016	Transferred to Facility B.
23 February 2017	Transferred to Facility C.

**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 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 2015.</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>	
7 October 2016	The Minister declined to intervene under s 197AB to allow Mr X to reside in community detention.

<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.

6 February 2017	Mr X's case was again referred on a ministerial submission for consideration of a community detention placement. Consideration was ongoing at the time of the department's report.
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### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X suffers from significant ongoing mental health issues. He has been diagnosed with mixed anxiety and depressive disorder and assessed by multiple mental health professionals to be at chronic risk of suicide while he remains in restricted detention.</p> <p>Mr X has a history of self-harm and was admitted to a psychiatric hospital in September 2015 following three suicide attempts. In November 2015 and April 2016 it was recommended by psychiatrists that Mr X be placed in a less threatening environment or community detention to address his chronic depression and suicide risk and enable him to access ongoing mental health treatment in the community. It was further advised that Mr X is unlikely to ever be assessed as 'fit' to return to an RPC, and is likely to attempt suicide if returned.</p> <p>In December 2016 a psychiatrist recommended that Mr X be admitted to a psychiatric hospital for respite and recovery due to his depression, detention fatigue and increasing risk of self-harm. At the time of its most recent report, IHMS was awaiting approval for Mr X's admission.</p> <p>IHMS further advised that Mr X was originally transferred to Australia for cardiac investigations and was diagnosed with a benign cardiac abnormality that did not require ongoing treatment. Mr X continued to present with chest pain and was transferred to hospital for further assessments in May and November 2016. His pain was assessed as non-cardiac and he was given pain relief medication and education on managing his stress and anxiety. Mr X also received treatment for gout and gastritis and has been referred to an oral fascio maxillary specialist for extensive dental work.</p>	
30 March 2015 – 13 May 2015	Incident Reports recorded that Mr X self-harmed on three occasions.
15 May 2015	An Incident Report recorded that Mr X refused food and fluid.
2 September 2015 – 3 November 2015	Admitted to a psychiatric hospital.
30 December 2015	An Incident Report recorded that Mr X threatened to self-harm if he was transferred back to an RPC.
23 February 2017	An Incident Report recorded that Mr X self-harmed while being transferred to Facility C.

### Detention incidents

23 February 2017	<p>An Incident Report recorded that a length of sheets tied together was found wrapped around the head of Mr X's bed. He told the officers that he used this to stop his pillow from falling through the bed end. Mr X was transferred to Facility C later that day.</p> <p>On 18 April 2017 the department provided further information advising that Mr X was transferred to Facility C due to concern about a potential escape risk.</p>
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## Other matters

22 March 2017	<p>Mr X's advocate lodged a complaint with the Ombudsman's office regarding his transfer to Facility C, away from his psychological support network at Facility B. She claimed that Mr X had used the sheets to hold his pillow up for seven months and that officers had never expressed concerns about it during previous room searches.</p> <p>She also claimed that he was not given an opportunity to pack up his possessions before being transferred and consequently is missing some items that were gifted to him. This matter is currently under investigation by the Ombudsman's office and remained outstanding at the time of this report.</p>
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## Information provided by Mr X's advocate

<p>Mr X's advocate, Ms Y, provided information to the Ombudsman's office between February and April 2017 in which she expressed extreme concern about his declining physical and mental health, particularly following his transfer to Facility C. She advised that he witnessed his friends sustain significant injuries and was himself injured during the violence at Manus Island RPC in February 2014 and reiterated the findings of Mr X's doctors that restricted detention is adversely affecting his health.</p> <p>Ms Y said it has been very difficult for Mr X to see so many of the other medical transferees granted community detention placements and that he cannot understand why he remains in restricted detention, especially when multiple psychiatrists have recommended against it.</p> <p>Ms Y stressed that Mr X has not been involved in any behavioural incidents while in detention, and is not a risk to the community. She advised that he has a strong support network in the community in both Melbourne and Queensland, and that it is very difficult for them to see his deteriorating health in detention.</p>
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### **Ombudsman assessment/recommendation**

Mr X was detained on 12 October 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 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 the advice from IHMS that Mr X's mental health condition requires ongoing treatment and he is unlikely to ever be assessed as 'fit' to return to an RPC.

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 the recommendations by psychiatrists in November 2015 and April 2016 that Mr X be transferred to community detention to address his chronic depression and suicide risk.

The Ombudsman notes the advice from IHMS in January 2017 that it was awaiting approval to admit Mr X to a psychiatric facility for respite. The Ombudsman notes with serious concern that he has subsequently been transferred to a higher security immigration detention facility.

The Ombudsman recommends that the department follow up and urgently prioritise the request to admit Mr X to a psychiatric hospital.

The Ombudsman further strongly recommends that Mr X's case be referred to the Minister for urgent consideration of a community detention placement.

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 restricted detention indefinitely.

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