

## ASSESSMENT BY THE COMMONWEALTH 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 restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1979
<b>Ombudsman ID</b>	1002466-O
<b>Date of DIBP's reviews</b>	2 August 2016 and 31 January 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

4 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
5 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
4 September 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>
30 August 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Manus Island RPC on the same day.
3 September 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Facility B.
24 April 2017	The Department of Immigration and Border Protection (the department) advised that Mr X resided in 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 3 September 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>	
28 September 2015	Mr X requested ministerial intervention under ss 197AB and 198AE for consideration of a community detention placement and exemption from transfer to an RPC.
5 November 2015	The department advised that Mr X's request under s 198AE was finalised without referral to the Minister.

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

31 January 2017	The department advised that it was finalising a submission for the Minister's consideration under s 197AB.
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### 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 for the management of an adjustment disorder with depressed mood. Mr X presented with symptoms of low mood, poor sleep and loss of appetite but declined to take prescribed medication for depression and anxiety. In June and August 2016 a psychiatrist strongly recommended that Mr X be transferred to community detention as his mental health had deteriorated and he was experiencing suicidal thoughts. In November 2016 the psychiatrist advised that he should not be transferred to an RPC as he was at risk of suicide. His mental health continued to be monitored by a general practitioner (GP) and the mental health team.</p> <p>IHMS further advised that Mr X received treatment for tuberculosis and dietary and weight loss issues related to concerns about his prolonged immigration detention. His condition continued to be monitored by a GP.</p>	
15 August 2013	An Incident Report recorded that Mr X refused food and fluid.
20 July 2015 – 10 January 2017	Incident Reports recorded that Mr X threatened self-harm on three occasions.

### Ombudsman assessment/recommendation

<p>Mr X was detained on 4 August 2013 after arriving in Australia by sea and has been held in restricted 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 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.</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 restricted immigration detention may pose. The Ombudsman further notes advice from IHMS that Mr X required treatment for mental and physical health concerns related to situational stress and concerns about his prolonged detention. The Ombudsman notes with serious concern advice from a psychiatrist that Mr X would be at risk of suicide if he was returned to an RPC.</p> <p>The Ombudsman recommends that priority is given to resolving Mr X's immigration status.</p>
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