

## 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 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>	1990
<b>Ombudsman ID</b>	1002502-O
<b>Date of DIBP's reviews</b>	15 September 2016 and 16 March 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

18 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.
21 August 2013	Transfer to Christmas Island Immigration Detention Centre (IDC).
17 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
14 February 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Facility B.
25 September 2015	Transferred to a psychiatric hospital.
8 October 2015	Transferred to Facility B.
27 May 2016	Transferred to Facility C.
9 February 2017	Transferred to community detention.

### Visa applications/case progression

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 of the *Migration Act 1958* from lodging a valid protection visa application as a result of his method of arrival and transfer to an RPC.

Mr X was returned to Australia for medical treatment on 14 February 2015.

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.

23 June 2016	The Minister declined to intervene under s 197AB to allow Mr X to reside in community detention.
25 January 2017	The Minister intervened 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 review under s 486N.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has been diagnosed with an adjustment disorder with depressed mood and narcissistic personality disorder. He has a significant history of self-harm and suicide attempts and was intermittently placed on Supportive Monitoring and Engagement Observations whilst he was held at a detention facility.

In September 2015 Mr X was admitted to an inpatient psychiatric facility for two weeks after presenting with psychotic behaviour with persecutory beliefs. He was subsequently followed up by an IHMS psychiatrist who advised that he would not benefit from psychotherapy or psychiatric medication in detention. In August 2016 an IHMS psychiatrist advised that Mr X had difficulty connecting to others and was very prone to developing depression and anxiety due to vulnerabilities in his personality. As such he was diagnosed with cluster B personality vulnerabilities and adjustment disorder with depressed mood. Recommendations were made for ongoing psycho-education. IHMS advised that following Mr X's transfer to community detention he had not required mental health follow up.

IHMS further advised that while held in a detention facility Mr X received specialist counselling after disclosing a history of torture and trauma.

IHMS advised that Mr X received treatment for physical health concerns including kidney stones, a torn ligament, osteoarthritis, elevated lipid levels and a deviated nasal septum for which plastic surgery was pending.

29 July 2015 – 1 October 2015	Incident Reports recorded that Mr X self-harmed on three occasions and threatened self-harm on two occasions. On one of those occasions, on 14 September 2015, he was transported to hospital by ambulance after stating he had swallowed a razor blade.
25 September 2015 – 8 October 2015	Admitted to a psychiatric hospital.

## Detention incidents

Incident Report recorded that Mr X was allegedly involved in a number of minor behavioural incidents whilst being held at a detention facility including displaying aggressive behaviour towards other detainees and detention centre staff.

## Other matters

Mr X resides in community detention with his mother Ms Y, who is the subject of Ombudsman assessment 1002545-O.

### **Ombudsman assessment/recommendation**

Mr X was detained on 18 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 the advice from IHMS that Mr X has difficulty in connecting to others and is highly prone to developing depression and anxiety due to his vulnerabilities in his personality.

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.**