

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).

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1002707-O
Date of department's reports	7 July 2017 and 5 January 2018
Total days in detention	912 (at date of department's latest report)

Detention history

5 August 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland ¹ by sea. He was transferred to Christmas Island Immigration Detention Centre.
13 June 2014	Transferred to Nauru Regional Processing Centre (RPC). ²
15 May 2016	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation.
17 May 2016	Placed in the community. ³

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 Home Affairs (the department) has advised that Mr X is barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of his method of arrival and transfer to an RPC.</p> <p>Mr X was returned to Australia from an RPC on 15 May 2016 to support his wife and son who were returned to Australia for medical treatment on 13 May 2016.</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 family's treatment.</p>	
17 May 2016	The Minister intervened under s 197AB to grant Mr X and his family a community placement.
7 July 2017 and 5 January 2018	The department advised that Mr X and his wife and eldest son have undergone a Refugee Status Determination by the government of Nauru and have been found to be refugees.

¹ Following legislative amendment on 20 May 2013, all unauthorised maritime arrivals, including those who arrived on the Australian mainland or an 'excised offshore location' were barred from lodging a Protection visa application under s 46A.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

³ Mr X and his family were granted a placement in the community under s 197AB and remain in immigration detention.

5 January 2018	The department advised that Mr X and his family are not being considered for referral to the Minister under s 195A for the grant of a Final Departure Bridging visa (FDBV), as Mr X and his family have been assessed as vulnerable and unlikely to be able to support themselves if released from immigration detention.
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Other legal matters

7 July 2017 and 5 January 2018	The department advised that Mr X and his family have an ongoing application in the High Court (HC) seeking an injunction to prevent their removal from Australia.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for gastrological concerns and chronic back pain related to a past injury. He underwent a computed tomography scan and investigative testing in April 2017 which identified a bulging disc in his spine. Mr X was prescribed with pain relief medication and provided with steroid treatment. He was also reviewed by a podiatrist and attended physiotherapy but reported that he had not experienced any improvement in his condition. He was advised to implement lifestyle changes and continued to be monitored by a general practitioner for his chronic back pain.</p> <p>IHMS further advised that Mr X was identified as having a history of torture and trauma but declined to attend specialist counselling.</p>	
12 August 2013	An Incident Report recorded that Mr X refused food and fluid.

Other matters

<p>The department advised that Mr X's wife, Ms Y, arrived in Australia by sea on 16 October 2013 and was transferred to Nauru RPC on 22 November 2013. The couple were married on Nauru in August 2015.</p> <p>Mr X and his wife have two sons, Master Z, born in Nauru in May 2016, and Master P, born in Australia in June 2017. Mr X's wife and children have been in detention for less than two years and are not subject to reporting under s 486N.</p>	
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Ombudsman assessment

Mr X was detained on 5 August 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two and a half years.

Mr X was transferred to an RPC and returned to Australia to support his wife and son who were returned to Australia for medical treatment.

Mr X and his wife and eldest son have been found to be refugees by the government of Nauru.

The department advised that because Mr X arrived in Australia after 19 July 2013 he remains liable for transfer back to an RPC on completion of his family's medical treatment.

The Ombudsman notes with concern that it appears likely that the family will remain in detention in Australia for a prolonged and uncertain period while they continue to receive medical treatment.

The department further advised that Mr X and his family have an ongoing application in the HC seeking an injunction to prevent their removal from Australia.

The Ombudsman further notes the department's advice that Mr X and his family are not being considered for referral to the Minister under s 195A for the grant of an FDBV, as Mr X and his family have been assessed as vulnerable and unlikely to be able to support themselves if released from immigration detention.