

**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 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1992
<b>Ombudsman ID</b>	1002376-O
<b>Date of DIBP's reports</b>	27 April 2016 and 18 October 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

21 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 837 <i>Unalaska</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
24 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
4 July 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
3 March 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Brisbane Immigration Transit Accommodation.
13 March 2015	Transferred to Villawood IDC.

**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 (DIBP) have 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 his transfer to an RPC.</p> <p>Mr X was returned to Australia for medical treatment on 3 March 2015.</p> <p>DIBP have 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>	
12 March 2014	DIBP notified Mr X of the unintentional release of personal information. <sup>2</sup>

<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.

<sup>2</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

18 October 2016	DIBP advised that Mr X's case is currently being considered against the guidelines for referral to the Minister for consideration of a community detention placement 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 received treatment for depression, adjustment disorder and post-traumatic stress disorder. Following deterioration in his mental health, Mr X was transferred from Nauru to Australia and was admitted to hospital. The treating psychiatrist noted that Mr X's depression was associated with severe stress in relation to his uncertain immigration status and recommended that his status be resolved and that alternative detention options be explored.</p> <p>Following discharge from hospital, Mr X was prescribed with medication and regularly engaged with IHMS supportive counselling. IHMS advised that Mr X expressed wishes to return to Nauru and on 12 April 2016 an IHMS mental health medical director deemed him fit to return to Nauru. However, upon psychiatric review in May 2016 it was advised that offshore detention was not a suitable environment for his condition and it was recommended that he be placed in community detention.</p> <p>IHMS further advised that Mr X received treatment for a cardiac abnormality and chronic knee pain.</p>	
12 March 2015	A DIBP Incident Report recorded that Mr X was admitted to hospital following an incident of self-harm.

### Ombudsman assessment/recommendation

<p>Mr X was detained on 21 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. DIBP advised that because Mr X arrived after 13 July 2013 he remains liable for transfer back to an RPC on completion of his treatment.</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 and apparently indefinite detention may pose.</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 advice from an IHMS psychiatrist that Mr X's mental health concerns are associated with his ongoing detention. In light of this advice, the Ombudsman recommends that DIBP expedite the assessment of Mr X's case against the guidelines for referral to the Minister for consideration of a community detention placement.</p> <p>The Ombudsman further recommends that priority is given to resolving Mr X's immigration status.</p>	
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