

**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>	1971
<b>Ombudsman ID</b>	1002469-O
<b>Date of DIBP's reports</b>	10 August 2016 and 8 February 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

11 November 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland <sup>1</sup> Australia aboard Suspected Illegal Entry Vessel 862 <i>Tascalossa</i> . He was transferred to Northern Immigration Detention Centre (IDC).
14 November 2013	Transferred to Christmas Island IDC.
13 June 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>2</sup>
13 March 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point Alternative Place of Detention.
14 March 2015	Transferred to Melbourne Immigration Transit Accommodation.

**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 13 March 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>	
12 March 2014	The department notified Mr X of the unintentional release of personal information. <sup>3</sup>

<sup>1</sup> 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.

<sup>2</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>3</sup> In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

21 December 2016	Found not to meet the guidelines for referral to the Minister under s 197AB for a community detention placement.
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**Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and attended specialist counselling for management of multiple complex mental health concerns, including depression, adjustment disorder, post-traumatic stress disorder and a history of torture and trauma. In August 2015 Mr X was placed on Supportive Monitoring and Engagement observations following threats of self-harm and attended a psychiatric review. On 17 December 2015 a treating psychologist reported that Mr X was at high risk of attempting suicide and his mental health was likely to continue to deteriorate within a restricted detention environment.

IHMS further advised that Mr X received specialist treatment for multiple physical health conditions, including kidney stones, back pain and a facial injury. Following a surgical review on 22 November 2016, he was placed on a surgical waiting list to repair a hernia.

**Ombudsman assessment/recommendation**

Mr X was detained on 11 November 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.

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 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 serious concern the reported negative impact of restricted detention on Mr X’s mental health, including threats of self-harm, and advice from a treating psychologist that his condition is likely to deteriorate further if he remains in a restricted detention environment.

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.

Given these concerns, the Ombudsman strongly recommends that Mr X’s case be reassessed against the guidelines for referral to the Minister under s 197AB for a community detention placement.

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