

## ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION 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>	Stateless, born in Country A
<b>Year of birth</b>	1988
<b>Ombudsman ID</b>	1002476-O
<b>Date of DIBP's reviews</b>	23 August 2016 and 21 February 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

19 December 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.
23 December 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
8 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
13 September 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
14 September 2014	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 (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 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>	
21 December 2016	Found not to meet the guidelines for referral to the Minister under s 197AB for a community detention placement.

<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 received treatment for reoccurring urological concerns. He was referred for specialist review and underwent surgery on multiple occasions in 2015. In October 2016 a computed tomography scan identified that Mr X required further treatment and he was prescribed with pain relief medication. He continues to be monitored by the IHMS medical team and requires follow up diagnostic testing.

IHMS further advised that Mr X was referred to a psychologist following symptoms of situational stress and insomnia.

## Other Matters

Mr X's cousin, Mr Y resides in the community on a Bridging visa.

## Ombudsman assessment/recommendation

Mr X was detained on 19 December 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 the advice from IHMS that Mr X has a reoccurring medical condition that requires ongoing review and 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 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.

The Ombudsman recommends that priority is given to resolving Mr X's immigration status and that he be considered for a community detention placement while his medical treatment remains ongoing.