

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 Ms X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X
Citizenship	Country A
Year of birth	1980
Ombudsman ID	1002550-O
Date of DIBP's reviews	5 December 2016 and 6 June 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

25 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. She was transferred to an Alternative Place of Detention (APOD), Christmas Island.
22 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
5 June 2015	Returned to Australia and re-detained under s 189(1). She was transferred to Wickham Point APOD.
24 May 2016	Transferred to Villawood Immigration Detention Centre.
27 April 2017	Transferred to community detention.

Visa applications/case progression

<p>Ms 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 Ms X is barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of her method of arrival and transfer to an RPC.</p> <p>Ms X was returned to Australia for medical treatment on 5 June 2015.</p> <p>The department has advised that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to an RPC on completion of her treatment.</p>	
14 May 2016	Ms X requested ministerial intervention under ss 197AB and 198AE for consideration of a community detention placement and exemption from transfer to an RPC.
3 August 2016	The department advised that Ms X's requests under ss 197AB and 198AE were finalised without referral to the Minister.
10 April 2017	The Minister intervened under s 197AB to allow Ms X to reside in community detention.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

6 June 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical treatment.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X attended specialist counselling and was prescribed with medication for the management of depression, anxiety, panic attacks related to situational stress, and a history of torture and trauma. In June 2016 a treating psychiatrist strongly recommended that Ms X be placed in community detention as her prolonged time spent in immigration detention facilities was having a negative impact on her mental health. In September 2016 she presented with symptoms of low mood, lack of energy and paranoia and in January 2017 she was closely monitored by Serco officers after disclosing thoughts of suicide. She was reviewed by a psychiatrist in February 2017 and continued to be monitored by a general practitioner and the mental health team.</p> <p>IHMS further advised that Ms X received treatment for multiple physical health concerns, including kidney stones, gynaecological concerns, chronic back pain and an eye condition. She was reviewed by an ophthalmologist for her eye concerns and admitted to a hospital emergency department for review of gynaecological concerns after presenting with severe back and abdominal pain. She was referred for physiotherapy and was awaiting a pelvic ultrasound at the time of IHMS's latest report.</p>	
26 July 2015 – 10 March 2017	Incident Reports recorded that Ms X was transported to hospital on multiple occasions for physical health concerns.
2 October 2015	An Incident Report recorded that Ms X self-harmed.
11 February 2016	An Incident Report recorded that Ms X threatened self-harm.

Detention incidents

11 February 2016	An Incident Report recorded that Ms X lodged a complaint alleging that she was sexually assaulted by a male detainee. The matter was referred to the police for investigation.
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Ombudsman assessment/recommendation

<p>Ms X was detained on 25 July 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.</p> <p>Ms X was transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.</p> <p>The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical 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 Ms X is not eligible to have her protection claims assessed by Australia and that without an assessment of Ms X's claims it appears likely she will remain in detention for a prolonged period.</p> <p>The Ombudsman recommends that priority is given to resolving Ms X's immigration status.</p>
