

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	1988
Ombudsman ID	1002668-O
Date of DIBP's reports	12 May 2017 and 10 November 2017
Total days in detention	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 by sea. He was transferred to an Alternative Place of Detention, Christmas Island.
24 August 2013	Transferred to Christmas Island Immigration Detention Centre.
20 July 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
10 April 2016	Returned to Australia and re-detained under s 189(1). He was transferred to Facility B.
28 July 2016	Transferred to Facility C.
24 July 2017	Placed in the community. ²

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 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 for medical treatment on 10 April 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 treatment.</p>	
8 November 2016	Mr X lodged an application in the High Court seeking an injunction preventing his removal from Australia.
14 July 2017	The Minister intervened under s 197AB to grant Mr X a community placement.

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

² Mr X was granted a placement in the community under s 197AB and remains in immigration detention.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was allegedly assaulted while placed at Nauru RPC and sustained fractures. He was initially reviewed by a specialist and declined to undergo surgery. Following the second alleged assault in October 2016 he requested a referral for further treatment and was prescribed with pain relief medication.

IHMS further advised that Mr X engaged with the mental health team for the management of a sleeping disorder and an adjustment disorder with anxious mood. Following psychiatric review, Mr X was diagnosed with a sleep phase disorder and prescribed with medication. In December 2016, Mr X was reviewed by a psychiatrist and advised that he was experiencing nightmares of being attacked and feeling stressed and anxious. He was prescribed with medication and engaged with counselling to manage detention fatigue and other stressors prior to his placement in the community.

29 July 2016 and
2 September 2016

Incident Reports recorded that Mr X threatened self-harm.

Ombudsman assessment/recommendation

Mr X was detained on 21 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 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 that under current policy settings Mr X is not eligible to have his protection claims assessed by Australia and that without an assessment of Mr X's claims it appears likely he will remain in detention indefinitely.

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