

## 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 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1986
<b>Ombudsman ID</b>	1002773-O
<b>Date of department's report</b>	28 September 2017
<b>Total days in detention</b>	730 (at date of department's report)

### Detention history

December 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to Facility B.
January 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
October 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Facility C.
October 2015	Transferred to Facility D.
February 2017	Transferred to Facility E.

### Visa applications/case progression

April 2016	The Minister lifted the bars under ss 46A and 48B to allow Mr X to lodge a temporary visa application.
April 2016	Mr X was notified that he was eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He accepted the offer later that month and was assigned a provider.
June 2016	The Minister declined to intervene under s 195A to grant Mr X a bridging visa.
August 2016	Lodged a Temporary Protection visa (TPV) application.
February 2017	Issued with a Notice of Intention to Consider Refusal of his TPV under s 501. Mr X provided a response in April 2017.
June 2017	Found to meet the guidelines for referral to the Minister under s 195A.
July 2017	TPV application refused under s 501.
July 2017	Applied to the Administrative Appeals Tribunal for merits review.

<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.

September 2017	The Department of Home Affairs (the department) advised that consideration of Mr X's case for possible submission to the Minister under s 195A was not progressed due to his TPV refusal under s 501.
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### **Criminal history**

October 2014	Convicted in the District Court of Nauru of two offences and sentenced to nine months imprisonment.
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### **Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma, and attended specialist counselling for symptoms of stress. While placed at Nauru RPC Mr X received counselling for distress associated with detention fatigue, threats to his safety, his criminal charges, and his immigration pathway. Following his transfer to Facility E he was referred for further specialist counselling and at the time of IHMS's report he continued to await an appointment.

Following his release from a correctional facility in Nauru Mr X reported ongoing back pain. Investigative testing identified a spinal condition which required ongoing physiotherapy. Mr X reported an improvement in his pain following significant weight loss and regular physiotherapy.

### **Other matters**

September 2015	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to his placement at Nauru RPC and his understanding that he was to be returned to Australia. In November 2015 the department provided a response and advised that Mr X had since been transferred to Australia. In December 2015 the investigation was finalised.
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### **Case status**

Mr X was detained in December 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than two years.

In April 2016 the Minister lifted the bars under ss 46A and 48B to allow Mr X to apply for a temporary visa and in August 2016 Mr X lodged an application for a TPV.

Mr X's TPV was refused under s 501 in July 2017. The department advised that consideration of Mr X's case for possible submission to the Minister under s 195A was not progressed due to his TPV refusal under s 501.

At the time of the department's report Mr X was awaiting the outcome of merits review.