

## 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).

|                                |                                       |
|--------------------------------|---------------------------------------|
| <b>Name</b>                    | Mr X                                  |
| <b>Citizenship</b>             | Country A                             |
| <b>Year of birth</b>           | 1996                                  |
| <b>Ombudsman ID</b>            | 1002518-O                             |
| <b>Date of DIBP's reviews</b>  | 5 October 2016 and 5 April 2017       |
| <b>Total days in detention</b> | 912 (at date of DIBP's latest review) |

### Detention history

|                   |   |
|-------------------|---|
| 30 April 2013     | Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland <sup>1</sup> as an unaccompanied minor by sea. He was transferred to Darwin Airport Lodge Alternative Place of Detention (APOD). |
| 8 May 2013        | Transferred to Wickham Point Immigration Detention Centre (IDC).  |
| 22 May 2013       | Transferred to Wickham Point APOD.  |
| 10 June 2013      | Transferred to Pontville APOD.  |
| 12 September 2013 | Transferred to community detention.   |
| 9 October 2013    | Absconded from community detention.   |
| 17 March 2015     | Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Facility B.  |
| 28 August 2015    | Transferred to Facility C.  |
| 5 November 2015   | Transferred to Facility D.  |
| 8 November 2016   | Transferred to Facility B.  |
| 10 December 2016  | Transferred to Facility C.  |

### Visa applications/case progression

|                |  |
|----------------|--|
| 30 August 2013 | The Minister intervened under s 197AB to allow Mr X to reside in community detention.  |
| 2 June 2015    | Mr X requested voluntary removal. On 18 January 2016 he withdrew his request for removal.  |
| 5 October 2016 | The Department of Immigration and Border Protection (the department) advised that as Mr X has no matters before the department, the courts or tribunals, he is on a removal pathway. |

<sup>1</sup> A maritime arrival to Australia's mainland who is seeking protection. Maritime arrivals who arrived as 'direct entry persons' after 13 August 2012 and before 20 May 2013 are not subject to the s 46A bar.

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|--------------|---|
| 5 April 2017 | The department advised that it was in the process of obtaining a travel document from Country A for Mr X. |
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**Other legal matters**

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| November 2016 | Mr X appeared before a magistrate’s court in relation to assault offences and was fined \$1,000 with no conviction recorded. |
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**Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X received treatment for anxiety and insomnia related to detention fatigue. His condition continued to be monitored by the mental health team.

IHMS further advised that Mr X was diagnosed with hepatitis B in April 2015 and underwent investigative testing. He was reviewed by a gastroenterologist on 7 February 2017 and referred for specialist treatment.

**Information provided by Mr X**

During a telephone conversation with Ombudsman staff on 6 July 2017 Mr X advised that he was on an involuntary removal pathway and stated that his case manager repeatedly pressured him to return to Country A.

Mr X said that his mother had organised his passage to Australia after his father died. He said that he had no family support in Country A and was scared to return because he had experienced abuse and would be imprisoned by the government for departing the country illegally. He stated that he had disclosed this information to his previous case managers but has been told he is ineligible to apply for a protection visa.

Mr X advised that when he was placed in community detention he was young and impressionable and did not take his responsibilities seriously. He said that he was re-detained because he chose to move in with some friends and did not report his change of address. He stated that he would not make this mistake again and regrets his behaviour.

Mr X claimed that he was charged with assault after protecting his friend from being attacked by other detainees. He said he was confused and overwhelmed by the court process and felt pressured into pleading guilty.

Mr X advised that he was the youngest person detained at Facility C and he had no support network in detention. He said that the pressure of restricted detention had caused a deterioration in his mental health and he was unsure how much longer he could cope. He advised that he regularly saw a psychologist but the sessions often made him feel upset and confused.

### **Ombudsman assessment/recommendation**

Mr X was detained on 30 April 2013 after arriving in Australia as an unaccompanied minor by sea and has been held in detention for a cumulative period of more than two and a half years. He has no matters before the department, the courts or tribunals and is on a removal pathway.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged restricted immigration detention may pose. The Ombudsman notes with serious concern advice from IHMS that Mr X has received treatment for symptoms of anxiety and detention fatigue. The Ombudsman further notes with concern advice from Mr X that he has raised concerns about being returned to Country A but has been told he is ineligible to apply for a protection visa.

In light of Mr X's age and the absence of any recent behavioural or security concerns, the Ombudsman strongly recommends that consideration be given to transferring Mr X to a less restrictive detention facility while he awaits the resolution of his immigration status.