

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

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| <b>Name</b>                    | Ms X                                  |
| <b>Citizenship</b>             | Country A                             |
| <b>Year of birth</b>           | 1989                                  |
| <b>Ombudsman ID</b>            | 1002537-O                             |
| <b>Date of DIBP's reviews</b>  | 26 October 2016 and 28 April 2017     |
| <b>Total days in detention</b> | 912 (at date of DIBP's latest review) |

**Detention history**

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| 11 November 2013 | Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland <sup>1</sup> by sea. She was transferred to Northern Alternative Place of Detention (APOD). |
| 16 November 2013 | Transferred to Nauru Regional Processing Centre (RPC). <sup>2</sup>  |
| 1 November 2014  | Returned to Australia and re-detained under s 189(1). She was transferred to Wickham Point Immigration Detention Centre.   |
| 6 January 2015   | Transferred to Bladin APOD.  |
| 26 February 2015 | Transferred to Wickham Point APOD.   |
| 16 December 2015 | Transferred to Brisbane Immigration Transit Accommodation (ITA).   |
| 2 March 2016     | Transferred to Wickham Point APOD.   |
| 11 May 2016      | Transferred to Melbourne ITA.  |
| 7 March 2017     | Transferred to community detention.  |

**Visa applications/case progression**

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| <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 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 1 November 2014.</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> |
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<sup>1</sup> Following legislative amendment on 20 May 2013, all unauthorised maritime arrivals, including those who arrived on the Australian mainland or an 'excised offshore location' were barred from lodging a Protection visa application under s 46A.

<sup>2</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.

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| 27 April 2016    | The Minister declined to intervene under s 197AB to allow Ms X to reside in community detention. |
| 28 February 2017 | The Minister intervened under s 197AB to allow Ms X to reside in community detention.            |

### Health and welfare

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| <p>International Health and Medical Services (IHMS) advised that Ms X was provided with medication and attended specialist counselling for management of multiple mental health concerns, including anxiety, depression and an adjustment disorder relating to situational stress. While held in restricted detention, Ms X was placed on Supportive Monitoring and Engagement (SME) observations on multiple occasions following incidents of self-harm and suicidal ideation. On 16 December 2015 she was admitted to a psychiatric hospital for psychological counselling after presenting with low mood and disturbed sleep. Her condition continued to be monitored by the mental health team and in January 2017 improvements in her mental health were noted.</p> <p>IHMS further advised that Ms X received treatment for multiple physical health concerns, including chronic musculoskeletal pain, cardiac abnormalities, an eye condition and associated pain, gynaecological concerns and headaches. Ms X attended physiotherapy and was referred for specialist review as required. She was awaiting a computed tomography scan at the time of IHMS's latest report.</p> |  |
| 7 April 2015 –<br>14 November 2016  | Incident Reports recorded that Ms X self-harmed, threatened self-harm and expressed suicidal ideation on multiple occasions. |
| 16 April 2015 –<br>1 January 2017   | Incident Reports recorded that Ms X was admitted to hospital on four occasions for treatment of physical health concerns.    |
| 16 December 2015 –<br>23 February 2016  | Admitted to a psychiatric hospital.  |
| 17 January 2016   | An Incident Report recorded that Ms X was transported to hospital via ambulance for a psychological assessment.              |

### Ombudsman assessment/recommendation

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| <p>Ms X was detained on 11 November 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 with no processing of her protection claims.</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 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 in Australia and that without an assessment of Ms X's claims it appears likely she will remain in detention indefinitely.</p> <p>The Ombudsman recommends that priority is given to resolving Ms X's immigration status.</p> |
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