

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 restricted 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	1992
Ombudsman ID	1002483-O
Date of DIBP's reviews	27 August 2016 and 25 February 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

10 November 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 (APOD), Christmas Island.
11 November 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
12 November 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
30 August 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
31 August 2014	Transferred to Villawood IDC.

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 as a result of his method of arrival and transfer to an RPC.</p> <p>Mr X was returned to Australia for medical treatment on 30 August 2014.</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>	
14 June 2016 and 21 December 2016	Found not to meet the guidelines for referral to the Minister under s 197AB for consideration of a community detention placement. The department advised that a recommendation made by Mr X's medical specialist was taken into consideration when assessing his case.
13 January 2016	Mr X's ministerial intervention requests under ss 197AB and 198AE were finalised without a referral to the Minister.

Health and welfare

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.

International Health and Medical Services (IHMS) advised that Mr X received extensive treatment for chronic back and nerve pain. He was diagnosed with a spinal disc prolapse and nerve damage and underwent spinal surgery. On 13 February 2015 he was subsequently reviewed at a specialist pain clinic and prescribed with strong pain relief medication. Mr X attended regular physiotherapy and continued to be monitored by IHMS.

IHMS further advised that Mr X was treated by the mental health team for low mood, detention fatigue and an adjustment disorder. IHMS reported that Mr X self-harmed on one occasion and attended specialist counselling. On 15 April 2015 a psychiatrist noted that his psychological symptoms are directly related to his prolonged detention and chronic pain. The psychiatrist reported that Mr X's mental health will likely deteriorate if he remains in restricted detention or is returned to an RPC, and recommended that he be placed in a less restrictive environment. On 21 March 2016 a treating neurosurgeon further recommended that Mr X be placed in the community as the stress of his ongoing detention was attributing to his physical health symptoms.

Ombudsman assessment/recommendation

Mr X was detained on 10 November 2013 after arriving in Australia by sea and has been held in restricted detention for a cumulative period of more than two and a half years.

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 further notes with concern advice from a treating psychiatrist and neurosurgeon that Mr X's mental health will likely deteriorate if he remains in restricted detention or is returned to an RPC and that his mental and physical health may improve if he was placed in a less restrictive environment.

The Ombudsman notes that under current policy settings Mr X is not eligible to have his protection claims assessed in Australia and that without an assessment of his claims it appears likely he will remain in restricted detention indefinitely.

In light of the significant length of time Mr X has remained in detention and his ongoing mental and physical health concerns, the Ombudsman strongly recommends that Mr X's case be referred to the Minister for consideration under s 197AB for a community detention placement. The Ombudsman further recommends that priority is given to resolving Mr X's immigration status.