

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	Stateless, born in Country A
Year of birth	1987
Ombudsman ID	1002583-O
Date of DIBP's reviews	27 January 2017 and 28 July 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. Later that day he was transferred to Christmas Island Immigration Detention Centre.
13 November 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
15 November 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
22 November 2014	Transferred to Melbourne Immigration Transit Accommodation (ITA).
13 March 2015	Transferred to Nauru RPC.
27 May 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
30 May 2015	Transferred to Melbourne ITA.
8 June 2017	Transferred to community detention.

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 for medical treatment on 15 November 2014 and 27 May 2015.</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>	
1 June 2017	The Minister intervened under s 197AB to allow Mr X to reside in community detention.

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.

28 July 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for a number of physical health concerns including chest and back pain, and urological and gastrological concerns. He attended multiple specialist reviews for his urological concerns, underwent surgery, and was subsequently recommended topical pain relief for continuing pain and swelling. A follow-up appointment with an urologist was scheduled for 19 July 2017. Mr X further reported a number of gastrological concerns for which he was reviewed, prescribed with medication and referred for possible surgical intervention.

IHMS further advised that Mr X attended specialist counselling and received treatment for the management of anxiety, depression, sleeping difficulties and a history of torture and trauma. He frequently engaged with the mental health team and attended wellbeing and support groups. Upon review by a psychiatrist in August 2016, he was diagnosed with a mixed anxiety and depressive disorder associated with detention fatigue, low mood, rumination and ongoing worry regarding his immigration status. He attended both individual and group counselling and participated in cognitive behaviour therapy. He continued to be monitored by a general practitioner.

Ombudsman assessment/recommendation

Mr X was detained on 10 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.

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 department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.

The Ombudsman notes the advice from IHMS that Mr X has a medical condition that requires ongoing 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 for a prolonged period.

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