

## 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>	1985
<b>Ombudsman ID</b>	1002554-O
<b>Date of DIBP's reviews</b>	10 December 2016 and 13 June 2017
<b>Total days in detention</b>	915 (at date of DIBP's latest review)

### Detention history

26 July 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.
4 August 2013	Transferred to Christmas Island Immigration Detention Centre.
29 August 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>
15 January 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point APOD.
16 January 2015	Transferred to Brisbane Immigration Transit Accommodation.
20 February 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 January 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>	
10 December 2016	The department advised that Mr X had a matter before the High Court regarding his immigration status which prevented consideration of his return to an RPC at that time.
13 February 2017	The Minister intervened under s 197AB to allow Mr X to reside in community detention.
13 June 2017	The department advised that it is supporting the government of Papua New Guinea to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.

<sup>1</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.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X had a history of spinal tethering, a complex spine condition, and had received treatment for associated urological concerns. Mr X underwent a series of corrective surgeries in 2011, 2015 and 2016. IHMS advised that surgical intervention had varied success and Mr X continued to experience chronic pain and a number of management issues. IHMS further advised that Mr X reported mouth ulceration concerns and was provided with advice for ongoing management and review.

IHMS further advised that Mr X attended multiple specialist counselling sessions for the management of a history of torture and trauma. Following psychiatric review, it was reported that Mr X presented with severe feelings of depression and stress relating to his prolonged detention and uncertain future. Mr X was prescribed with antidepressant medication and received further support from the mental health team. An IHMS Medical Director advised that with consideration of the severity of Mr X's symptoms, his mental health had been adversely affected by being placed in an immigration detention facility. IHMS advised that following his placement in community detention, Mr X had not reported any mental health concerns.

24 February 2017

An Incident Report recorded that Mr X was transported to hospital by ambulance regarding his urological concerns.

## Other matters

Mr X's brother, Mr Y, was granted a bridging visa and resides in the community.

## Ombudsman assessment/recommendation

Mr X was detained on 26 July 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 Papua New Guinea 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's urological concerns require ongoing treatment and management.

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 with concern that Mr X's mental health was adversely affected by being placed in an immigration detention facility, however no further concerns were reported following his transfer to community detention.

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.