

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

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1958
<b>Ombudsman ID</b>	1002545-O
<b>Date of DIBP's reviews</b>	16 November 2016 and 18 May 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

18 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. She was transferred to an Alternative Place of Detention (APOD), Christmas Island.
21 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
17 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
17 April 2015	Returned to Australia and re-detained under s 189(1). She was transferred to Wickham Point APOD.
18 April 2015	Transferred to Melbourne Immigration Transit Accommodation.
16 October 2015	Transferred to Wickham Point APOD.
27 May 2016	Transferred to Villawood IDC.
9 February 2017	Transferred to community detention.

### Visa applications/case progression

<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 17 April 2015.</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>	
25 January 2017	The Minister intervened under s 197AB to allow Ms X to reside in community detention.

<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 Ms X received specialist treatment for multiple physical health concerns, including osteoarthritis and associated neck and back pain, gastritis and gynaecological concerns. She attended regular physiotherapy and continued to be monitored by a general practitioner (GP).

IHMS further advised that Ms X attended psychological counselling and group therapy for the management of a major depressive disorder related to her chronic pain and situational stress. In December 2016 she was reviewed by a psychiatrist who reported that Ms X was concerned about her prolonged detention and physical health but declined a prescription for antidepressant medication. Her mental health continued to be monitored by a GP.

19 May 2016

An Incident Report recorded that Ms X threatened self-harm.

## Other matters

Ms X resides in community detention with her son, Mr Y, who is the subject of Ombudsman assessment 1002502-O.

## Ombudsman assessment/recommendation

Ms X was detained on 18 August 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.

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.

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 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.

The Ombudsman recommends that priority is given to resolving Ms X's immigration status.