

## 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>	1994
<b>Ombudsman ID</b>	1002555-O
<b>Date of DIBP's reports</b>	19 December 2016 and 19 June 2017
<b>Total days in detention</b>	913 (at date of DIBP's latest report)

### Detention history

17 October 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, Christmas Island.
22 November 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
24 January 2015	Returned to Australia and re-detained under s 189(1). She was transferred to Facility B. Later that day she was transferred to Facility C.
25 January 2015	Transferred to Facility D.
18 January 2016	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 in Australia 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 24 January 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>	
6 January 2016	The Minister intervened under s 197AB to allow Ms X to reside in community detention.
16 March 2016	Ms X breached her community detention conditions. A warning letter was issued to Ms X by the department on 13 April 2016.
19 June 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she 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 reporting under s 486N.

## Other legal matters

19 December 2015	Ms X was allegedly involved in a physical altercation with another detainee. The matter was referred to the Australian Federal Police for further investigation with no further information provided at the time of the department's latest report.
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## Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X received specialist counselling for a history of torture and trauma, and engaged with the mental health team regarding an adjustment disorder with anxiety and depression. Ms X self-harmed on multiple occasions and was placed under Supportive Monitoring and Engagement observations. Following review, a psychiatrist recommended that Ms X be placed in community detention in the interests of her mental health. Upon being transferred she continued to be monitored by specialist counsellors and a general practitioner (GP).</p> <p>IHMS further advised that Ms X had a history of female genital mutilation which had caused intermittent health issues. Ms X was reviewed by a specialist and underwent corrective surgery in February 2015. She continued to be monitored by a GP with specialist referrals as required.</p>	
2 February 2015	An Incident Report recorded that Ms X was involved in alerting officers to an incident of self-harm by another detainee.
11 November 2015 – 12 November 2015	Incident Reports recorded that Ms X expressed frustration and distress regarding the food policy at Facility D. The following day Ms X threatened self-harm.

## Detention incidents

22 January 2016	An Incident Report recorded that a detainee threatened Ms X with a knife.
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## Information provided by Ms X

<p>During an interview with Ombudsman staff on 7 September 2017 Ms X advised that she was struggling to get by financially despite the welfare support she receives due to not being able to engage in paid work. She stated that she did not have any family in Australia, but she was supported by asylum seeker advocacy groups. She explained that despite it being emotionally difficult for her, she volunteered with an advocacy group and visited other detainees at Facility D to provide them with some hope.</p> <p>Ms X advised that she was married, and that her husband and his family lived in City E. She stated that she used to be able to visit him, however she was no longer allowed, and her requests to be placed at a community residence in City E had been rejected. She further advised that they had been told that her husband would not be allowed to live with her in community detention. She stated that she had not been provided with a written reason for the rejections, nor written advice about any change in policies.</p> <p>Ms X stated that she used to attend specialist counselling, but did not feel that it assisted her. She stated that her immigration status caused her stress, and that she felt like her life had been put on hold as she did not have any certainty regarding her future.</p>	
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### **Ombudsman assessment/recommendation**

Ms X was detained on 17 October 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.

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 department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical 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 by Australia and that without an assessment of Ms X's claims it appears likely she will remain in detention for a prolonged period.

1. The Ombudsman recommends that priority is given to resolving Ms X's immigration status.
2. The Ombudsman further recommends that Ms X's placement in the community be varied under s 197AD so that she can reside in City E with her husband to provide her with greater social support and benefit her mental wellbeing.