

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	Country A
Year of birth	1988
Ombudsman ID	1002587-O
Date of DIBP's reports	28 January 2017 and 30 July 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

20 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He arrived in Australia with his mother, Ms Y, and sister, Ms Z. ¹ The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
21 July 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
5 August 2013	Transferred to Manus Island Regional Processing Centre (RPC). ²
10 January 2014	Transferred to Nauru RPC and reunited with his family.
14 February 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Bladin Point APOD.
26 February 2015	Transferred to Wickham Point APOD.
24 March 2016	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 from an RPC for medical treatment on 14 February 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 mother's treatment.</p>	
17 March 2016	The Minister intervened under s 197AB to allow Mr X and his family to reside in community detention.

¹ Ms Y and Ms Z are the subjects of Ombudsman assessment 1002478-O. Mr X was separated from his mother and sister when he was transferred to Manus Island RPC on 5 August 2013 and the family was reunited at Nauru RPC on 10 January 2014. They now reside together in community detention in Australia.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

30 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

<p>International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling for the management of an adjustment disorder, anxiety and a history of torture and trauma. In February 2016 it was reported that Mr X was not coping with his prolonged detention and was recommended to be transferred to community detention. Mr X’s mental health continued to be monitored by a general practitioner (GP) and psychologist following his transfer to community detention. In March 2017 he was prescribed with medication after presenting to a GP with symptoms of stress, anxiety and disturbed sleep.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health concerns, including a chronic cough, throat pain and gastric reflux (GORD). He was prescribed with medication for the management of GORD and continued to be monitored by a GP. At the time of IHMS’s latest review Mr X was awaiting an appointment with an ear, nose and throat specialist.</p>	
25 March 2015 – 28 March 2015	Incident Reports recorded that Mr X threatened self-harm on three occasions.
4 September 2015 and 11 November 2015	Incident Reports recorded that an ambulance was called for Mr X on two occasions after he reported experiencing chest pain.
16 October 2015	An Incident Report recorded that Mr X self-harmed following an incident of self-harm by his mother.

Ombudsman assessment/recommendation

<p>Mr X was detained on 20 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.</p> <p>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 mother’s treatment.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>The Ombudsman recommends that priority is given to resolving Mr X’s immigration status.</p>
