

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 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	1992
Ombudsman ID	1002531-O
Date of DIBP's reviews	15 October 2016 and 19 April 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

30 September 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.
13 November 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
29 November 2014	Returned to Australia and re-detained under s 189(1). He was transferred to Wickham Point Immigration Detention Centre.
9 January 2015	Transferred to Wickham Point APOD.
30 June 2016	Transferred to Melbourne Immigration Transit Accommodation.
24 August 2017	The Department of Immigration and Border Protection (the department) advised that he had been transferred to community detention.
28 August 2017	Granted a Final Departure Bridging visa and released from 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 has advised that Mr X is barred under ss 46A and 46B from lodging a valid protection visa application 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 29 November 2014.</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>	
21 December 2016	Found not to meet the guidelines for referral to the Minister under s 197AB for a community detention placement.
22 December 2016	Lodged an application in the High Court requesting an injunction preventing his removal from Australia.

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.

6 March 2017	Mr X's case was identified for a possible referral to the Minister under s 197AB.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received specialist treatment for type 1 diabetes and related retinopathy and chronic fungal infections. In December 2013 he was reviewed by an endocrinologist and dietician and was prescribed with medication and lifestyle education. In January 2015 he was assessed by an ophthalmologist and subsequently underwent multiple surgical procedures to treat his diabetic retinopathy. His condition continued to be regularly monitored by a multidisciplinary team, including a general practitioner, endocrinologist, podiatrist and optometrist.

IHMS further advised that Mr X disclosed a history of torture and trauma and attended specialist counselling. He presented with frustration, low mood and anxiety related to his prolonged detention and concerns about his physical health.

Other matters

Mr X's brother, Mr Y, was located at Manus Island RPC at the time of the department's latest report.

Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but declined to do so.

Ombudsman assessment/recommendation

Mr X was detained on 30 September 2013 after arriving in Australia by sea and was held in restricted detention for a cumulative period of more than two and a half years with no processing of his protection claims.

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.

Mr X was granted a Final Departure Bridging visa on 28 August 2017 and was released from immigration detention.

The Ombudsman notes with concern advice from IHMS that Mr X suffers from type 1 diabetes and related medical conditions that require extensive ongoing treatment and monitoring.

In light of these concerns, the Ombudsman recommends that the department explore options to provide further access to medical and support services while Mr X remains in the community on a Final Departure Bridging visa for better management of his ongoing health concerns.