

## 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>	1991
<b>Ombudsman ID</b>	1002565-O
<b>Date of DIBP's reports</b>	10 January 2017 and 6 July 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

14 April 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland by sea. He was transferred to Northern Immigration Detention Centre (IDC).
30 April 2013	Transferred to Manus Island Regional Processing Centre (RPC). <sup>1</sup>
24 July 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin IDC.
26 July 2013	Transferred to Yongah Hill IDC.
15 October 2014	Granted a bridging visa and released from detention.
12 April 2016	Re-detained under s 189(1) following his release from a correctional facility. He was transferred to Maribyrnong IDC.
18 August 2016	Transferred to Christmas Island IDC.

### Visa applications/case progression

12 March 2014	The Department of Immigration and Border Protection (the department) notified Mr X of the unintentional release of personal information <sup>2</sup> and advised that the privacy breach would be taken into account when considering his protection claims.
15 October 2014	Granted a bridging visa.
3 June 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
5 July 2016 and 13 December 2016	The Minister declined to intervene under s 195A to grant Mr X a bridging visa.
15 July 2016	Lodged a Temporary Protection visa (TPV) application.

<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.

<sup>2</sup> In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

8 May 2017	TPV application refused.
11 May 2017	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
20 June 2017	The IAA affirmed the decision to refuse Mr X's TPV application.
6 July 2017	The department advised that Mr X's case was under consideration for referral to the Minister under s 195A.

#### Other legal matters

29 June 2015	Mr X was charged with multiple drug offences and theft of electricity and remanded in custody. On 12 April 2016 the Director of Public Prosecutions withdrew all charges and Mr X was released from a correctional facility.
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#### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X engaged with the mental health team and attended counselling for the management of depression and distress. He was reviewed by a psychologist in December 2016 and presented with low motivation and difficulty sleeping associated with situational stressors.</p> <p>IHMS further advised that Mr X was provided with treatment for physical health concerns, including chronic back pain.</p>
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#### Ombudsman assessment/recommendation

<p>Mr X was detained on 14 April 2013 after arriving in Australia by sea and has been held in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>On 3 June 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 15 July 2016 Mr X lodged an application for a TPV.</p> <p>Mr X's TPV application was refused on 8 May 2016 and on 20 June 2017 the IAA affirmed the refusal.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose.</p> <p>In light of the length of time Mr X has remained in detention and the absence of any behavioural or security concerns, the Ombudsman recommends Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.</p>
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