

# ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment was tabled in Parliament on 10 May 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1994
<b>Ombudsman ID</b>	1002354-O1
<b>Date of DIBP's reports</b>	27 March 2017 and 24 September 2017
<b>Total days in detention</b>	1,276 (at date of DIBP's latest report)

## Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Facility B.	
8 March 2017	Transferred to Facility C to enable him to be closer to his support networks.
17 August 2017	Placed in the community. <sup>1</sup>

## Recent visa applications/case progression

The Department of Immigration and Border Protection (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 a Regional Processing Centre (RPC) on completion of his treatment.	
9 August 2017	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Mr X a community placement.
24 September 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.

## Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment and was reviewed by an ophthalmologist for the management of ongoing vision concerns, including bilateral cataracts and a degenerative eye condition that will likely lead to blindness. In April 2017 Mr X underwent cataract surgery following a review with an ophthalmologist who reported that his vision had deteriorated. Mr X was also diagnosed with latent tuberculosis in November 2016 and was referred to a specialist clinic for review. He commenced treatment and continued to be regularly monitored by IHMS and a specialist clinic for this condition.</p> <p>IHMS further advised that Mr X was reviewed by a psychiatrist in April 2017 who reported that his mental health was stable and he did not require treatment for any major mental health concerns.</p>	
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<sup>1</sup> Mr X was granted a placement in the community under s 197AB and remains in immigration detention.

## Ombudsman assessment/recommendation

Mr X was detained on 12 October 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than three and a half years.

Mr X was transferred to an RPC and returned to Australia for medical treatment on two occasions. 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.

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.

The Ombudsman's previous assessment recommended that Mr X be referred to the Minister for consideration of a community placement and that priority be given to resolving Mr X's immigration status.

On 13 June 2017 the Minister advised that Mr X was found not to meet the guidelines under s 197AB for a possible community placement and that under current legislation and policy settings, Mr X remains subject to return to an RPC on completion of his treatment.

On 9 August 2017 the Minister intervened under s 197AB to grant Mr X a community placement.

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.

IHMS has advised that Mr X requires ongoing monitoring and treatment for latent tuberculosis and a degenerative eye condition that will likely lead to blindness.

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.

The Ombudsman recommends that the department continue to prioritise the resolution of Mr X's immigration status.