

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 1002397-O was tabled in Parliament on 10 May 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1966
Ombudsman ID	1002397-O1
Date of DIBP's reports	8 May 2017 and 6 November 2017
Total days in detention	1,276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X has remained at Melbourne Immigration Transit Accommodation.

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.	
8 May 2017	The department advised that it was preparing a submission for the Minister's consideration under s 197AB of the <i>Migration Act 1958</i> for the grant of a community placement. On 6 November 2017 the department advised that the submission was delayed pending the receipt of further information and the matter remained ongoing.
6 November 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

International Health and Medical Services (IHMS) advised that Mr X continued to be monitored for cardiac disease and high cholesterol. In July 2016, routine pathology testing indicated that Mr X was at risk of developing diabetes and he was provided with education about dietary and lifestyle modifications. Improvements in his condition were recorded in May 2017 and he was provided with further education. He continued to be monitored and supported by IHMS.

Information provided by Mr X

During an interview with Ombudsman staff on 22 June 2017 Mr X advised that he had been in detention for almost four years and had been returned to Australia for medical reasons. He stated that he had attended an interview in relation to his protection claims in Nauru, but was transferred to Australia before he could be given the result. He stated that his case manager had spoken to him about the possibility of a community placement.

Mr X stated that his health was much better and he did not have any mental health concerns. He advised that he was grateful to be transferred to Australia so quickly when his physical health began to deteriorate as the medical facilities on Nauru were limited.

Mr X advised that he had been on a few excursions, participated in art and sport activities and never missed an English class. He spoke to his family in Country A over the phone and Skype, but had no family in Australia. He had two friends in the community who had promised to assist him if he was granted a community placement.

Ombudsman assessment/recommendation

Mr X was detained on 26 July 2013 after arriving in Australia by sea and has remained in an immigration detention facility 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. 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 priority be given to resolving Mr X's immigration status.

On 10 May 2017 the Minister noted the recommendation and advised that under current legislation and policy settings, Mr X remains subject to return to an RPC on completion of his 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 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.