

## ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION 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 36 months (three years).

The first assessment 1002366-O was tabled in Parliament on 8 November 2016. 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>	1983
<b>Ombudsman ID</b>	1002366-O1
<b>Date of DIBP's reviews</b>	10 October 2016 and 10 April 2017
<b>Total days in detention</b>	1,096 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1002366-O), Mr X has remained in community detention in Queensland.	
2 April 2017 – 18 April 2017	The Department of Immigration and Border Protection (the department) allowed Mr X to temporarily reside with his wife in an alternative community detention placement in Victoria.

### Recent visa applications/case progression

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.	
23 January 2017	The Minister declined to intervene under s 197AD of the <i>Migration Act 1958</i> to vary Mr X's community detention placement to enable him to reside with his wife.
31 March 2017	Mr X's case was again referred on a ministerial submission for consideration under s 197AD.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling for management of multiple mental health concerns, including major depression, anxiety and a history of torture and trauma. He presented with low mood related to situational stress and his ongoing separation from his wife who resides in Victoria.	
On 25 November 2016 he was reviewed by a psychiatrist and diagnosed with post-traumatic stress disorder and prescribed with medication. The treating psychiatrist recommended that Mr X's mental health would benefit from him being placed closer to his family support network in Victoria. IHMS advised that his condition continued to be monitored by a psychiatrist and psychologist.	

## **Other matters**

On 22 August 2015 Mr X married Ms Y, who is an Australian citizen and resides in Victoria.

On 9 May 2016 Ms Y requested that the department consider varying Mr X's community detention placement to enable him to reside with her in Victoria. The department advised that it was considering this request and the matter remained ongoing.

## **Ombudsman assessment/recommendation**

Mr X was detained on 30 July 2013 after arriving in Australia by sea and has been held in detention for a cumulative period of more than three 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.

The Ombudsman notes the advice from IHMS that Mr X has a medical condition that requires ongoing 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 with serious concern the reported adverse impact of Mr X's ongoing separation from his wife on his mental health. The Ombudsman further notes advice from a psychiatrist that Mr X's mental health would benefit from being placed closer to his family support network in Victoria.

In light of these concerns, the Ombudsman strongly recommends that Mr X's community detention placement be varied to enable him to reside with his wife.

The Ombudsman notes that under current policy settings Mr X is not eligible to have his protection claims assessed in Australia and that without an assessment of Mr X's claims it appears likely he will remain in detention indefinitely.

The Ombudsman again recommends that priority is given to resolving Mr X's immigration status.