

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 restricted immigration detention for a cumulative period of more than 42 months (three and a half years).

The first assessment 1002218-O was tabled in Parliament on 23 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1002218-O1
Date of DIBP's reviews	3 November 2016 and 4 May 2017
Total days in detention	1,276 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002218-O), Mr X remained at Wickham Point Alternative Place of Detention	
11 May 2016	Transferred to Yongah Hill Immigration Detention Centre.

Recent visa applications/case progression

<p>Mr X arrived in Australia by sea after 19 July 2013 and was transferred to a Regional Processing Centre (RPC). The Department of Immigration and Border Protection (the department) has advised that Mr X is barred under ss 46A and 46B of the <i>Migration Act 1958</i> 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 9 November 2013.</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>	
28 April 2017	Found to meet the guidelines for referral to the Minister under s 197AB for a community detention placement.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for symptoms of a major depressive disorder, including poor sleep and frequent nightmares related to a history of torture and trauma. Mr X attended regular specialist counselling and was monitored by the mental health team. On 4 August 2016 a treating psychiatrist reported that the speedy resolution of Mr X's immigration status would be beneficial for his mental health and on 31 January 2017 the psychiatrist recommended that he be transferred to community detention to prevent his condition deteriorating further.</p> <p>IHMS further advised that Mr X received treatment for urinary issues and chronic ear pain and was awaiting a follow up review with an ear nose and throat specialist.</p>	
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Information provided by Mr X

During a telephone conversation with Ombudsman staff on 28 June 2017 Mr X advised that he was unsure about the progress of his case and frustrated with the length of time he has remained in restricted detention.

Mr X advised that the stress of prolonged restricted detention had caused him to suffer from anxiety, sleeping problems, severe headaches and associated facial and ear pain. He reported that he was provided with antidepressant and pain relief medication to help manage these concerns and regularly attended specialist counselling. He also advised that it can take more than a week to see an IHMS general practitioner and this meant his symptoms often went unmanaged.

Mr X advised that both his psychiatrist and specialist counsellor have recommended that he be transferred to community detention as it would benefit his mental health. He reported that his case manager had said that he was being considered for a community detention placement but there had been no update recently.

Mr X also reported that he has two young children in his home country. He said that it was difficult to speak with them on the telephone because they lived in a conflict affected area.

Ombudsman assessment/recommendation

Mr X was detained on 17 October 2013 after arriving in Australia by sea and has been held in restricted detention for a cumulative period of more than three 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.

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 further notes advice from a treating psychiatrist that Mr X's health would benefit from the speedy resolution of his immigration status. The Ombudsman notes with serious concern the psychiatrist's recommendation that Mr X be transferred to community detention to prevent his mental health deteriorating further.

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 restricted detention indefinitely.

In light of the significant length of time Mr X has remained in detention and the absence of any behavioural or security concerns, the Ombudsman strongly recommends that Mr X's case be referred to the Minister for consideration under s 197AB for a community detention placement.

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