

## 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 1002404-O 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>	1959
<b>Ombudsman ID</b>	1002404-O1
<b>Date of department's reports</b>	13 May 2017 and 13 November 2017
<b>Total days in detention</b>	1,276 (at date of department's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, Mr X has continued to be placed in the community<sup>1</sup> with his wife and daughter, who are the subject of Ombudsman assessment 1002505-O1.

### Recent visa applications/case progression

The Department of Home Affairs (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.	
13 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.

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<sup>1</sup> Mr X was granted a placement in the community under s 197AB of the *Migration Act 1958* and remains in immigration detention.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment and attended counselling for the management of depression, narcissistic personality disorder and a history of torture and trauma. He also presented with poor sleep related to family, health and situational stressors. In March 2017 a specialist counsellor advised that his mental health had deteriorated while he has remained in immigration detention and he was referred to a psychiatrist.

IHMS further advised that Mr X received specialist treatment for multiple complex physical health concerns, including lung disease, asthma, heart disease, urological concerns and osteoarthritis. He was reviewed by a respiratory specialist and general practitioner on multiple occasions and his prescribed medications were regularly adjusted. He also regularly attended physiotherapy for the management of lower back pain and was referred to a neurosurgical clinic. IHMS reported that he was awaiting appointments with a respiratory specialist, surgical specialist and urologist at the time of its latest report.

April 2017

Admitted to hospital after presenting with chest pain and symptoms related to his lung disease.

## Ombudsman assessment/recommendation

Mr X was detained on 20 July 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 four 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 priority be given to exploring options to enable the resolution of 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 again recommends that the department prioritise the resolution of Mr X's immigration status.