

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1981
Ombudsman ID	1002632-O
Date of DIBP's reports	29 March 2017 and 26 September 2017
Total days in detention	913 (at date of DIBP's latest report)

Detention history

13 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
15 September 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
4 October 2013	Transferred to Manus Island Regional Processing Centre (RPC). ¹
17 April 2015	Returned to Australia and re-detained under s 189(1). He was transferred to Facility B.
18 April 2015	Transferred to Facility C and to Facility D later that day.

Visa applications/case progression

Mr X arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that Mr X is barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of his method of arrival and transfer to an RPC.

Mr X was returned to Australia from an RPC for medical treatment on 17 April 2015.

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.

11 August 2015	Requested removal from Australia.
31 March 2016	Mr X lodged a Safe Haven Enterprise visa (SHEV) application.
5 April 2016	Withdrew request for removal.
24 May 2016	Mr X's SHEV application was deemed invalid under s 46A.
13 September 2017	Mr X's case was referred on a ministerial submission for consideration under s 197AB for the grant of a community placement.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

26 September 2017	The department advised that it is supporting the government of Papua New Guinea to finalise the Refugee Status Determinations of Mr X while he remains temporarily in Australia for medical treatment.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X was provided with treatment and attended counselling for complex grief, major depression and an adjustment disorder with anxious mood. Mr X was placed on Supportive Monitoring and Engagement observations on numerous occasions following episodes of impulsive behaviour, deteriorating mental health and risk of self-harm. In October 2015 he was reviewed by a psychiatrist following an incident of self-harm related to frustration and concerns for his mother’s health.</p> <p>In March 2017 Mr X presented with low mood, anxiety, suicidal thoughts and hopelessness related to his inability to support his family in Country A while he remains in detention. The treating psychiatrist noted that his ongoing detention and separation from his family were contributing to his mental health concerns and recommended he be placed in the community as his mental health will deteriorate if he remains at Facility D.</p> <p>IHMS further advised that Mr X was returned to Australia for medical treatment after suffering a severe allergic reaction while detained at Manus Island RPC. He underwent investigative tests in Australia and is now required to carry an EpiPen.</p> <p>Mr X also received specialist treatment for multiple vascular abnormalities and associated headaches. He underwent investigative tests and was scheduled to attend a review with an interventional neuroradiologist on 9 August 2017 to determine ongoing management.</p> <p>IHMS further reported that Mr X tested positive for tuberculosis in December 2014 and was subsequently commenced on specialist treatment. Follow-up testing returned normal results and his treatment was ceased in September 2015.</p>	
10 July 2015	An Incident Report recorded that Mr X was transferred to hospital following a seizure. He attended a neurological review with no further concerns reported.

Information provided by Mr X

<p>During an interview with Ombudsman staff in September 2017 Mr X said that his case manager had advised that he may be granted a community placement or Final Departure Bridging visa soon. He said that he does not understand why he remains in an immigration detention facility and he is just waiting for an outcome.</p> <p>Mr X explained that he is part of a class action against the Australian government related to the maltreatment of immigration detainees at Manus Island RPC. He stated that he had received the incorrect tuberculosis treatment while detained at Manus Island RPC and this had caused his physical health to deteriorate. He advised that because he received the incorrect treatment he was eligible to receive compensation and the Australian government was liable to pay a fine.</p> <p>Mr X advised that he constantly worries about his mother, wife and children who remain in Country A and is frustrated that he is unable to support them. He said that he feels very anxious, struggles to sleep and often feels like ending his life. He advised that he attends weekly counselling with the mental health team and his doctors had recommended that he be placed in the community.</p> <p>Mr X said that he would feel much better if he was able to live in the community as he would be able to speak with his family more often.</p>	
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Ombudsman assessment/recommendation

Mr X was detained on 13 September 2013 after arriving in Australia by sea and has been held in detention for a cumulative period of more than two 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 Papua New Guinea to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical 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 IHMS that Mr X requires treatment for multiple mental health concerns, including major depression and an adjustment disorder. In March 2017 a psychiatrist advised that Mr X's ongoing detention and separation from his family were contributing to his mental health concerns and recommended he be placed in the community.

Mr X has remained in an immigration detention facility for a significant amount of time without any behavioural or security concerns being raised.

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.

1. In light of these concerns and the information available, the Ombudsman strongly recommends that the department expedite the consideration of Mr X's case under s 197AB for the grant of a community placement.
2. The Ombudsman further recommends that priority is given to resolving Mr X's immigration status.