

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 1002376-O was tabled in Parliament on 1 March 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	1992
Ombudsman ID	1002376-O1
Date of DIBP's reports	18 April 2017 and 17 October 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 remained at Facility B.	
28 February 2017	Placed in the community. ¹

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.	
13 February 2017	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Mr X a community placement.
17 October 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.

¹ Mr X was granted a placement in the community under s 197AB and remains in immigration detention.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for multiple mental health concerns, including an adjustment disorder, depression, anxiety and a history of torture and trauma. While held in an immigration detention facility, Mr X engaged with the mental health team and was reviewed by a psychiatrist who reported that he presented with anxiety, headaches and situational stress related to his prolonged detention and uncertain future. The psychiatrist recommended that Mr X be released from the detention facility environment as he was young and vulnerable and his mental health would further deteriorate. Following his placement in the community Mr X's mental health was monitored by a general practitioner (GP). Mr X was prescribed with antidepressant medication and referred for psychological counselling after reporting that he continued to experience rumination, loneliness, disturbed sleep and nightmares, and anxiety about the welfare of his family overseas.

IHMS further advised that Mr X received treatment for osteoarthritis and associated chronic knee pain. He underwent investigative testing which identified mild degenerative changes and was prescribed with pain relief medication. He also underwent pathology testing and was monitored by a GP for liver concerns.

Ombudsman assessment/recommendation

Mr X was detained on 21 August 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. 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 the department expedite the assessment of Mr X's case against the guidelines under s 197AB for consideration of a community placement and that priority be given to resolving Mr X's immigration status.

On 1 March 2017 the Minister advised that Mr X had met the guidelines under s 197AB and would be referred to him for consideration of a community placement. The Minister further advised that under current legislation and policy settings, Mr X remains subject to return to an RPC on completion of his treatment.

On 13 February 2017 the Minister intervened under s 197AB to grant Mr X a community placement. The department has advised that the tabling statement to Parliament was finalised prior to the Minister intervening in Mr X's case under s 197AB.

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. IHMS advised that a psychiatrist had reported that Mr X was young and vulnerable and his mental health would deteriorate if he was placed in a detention facility environment.

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.