

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 three and a half years. The previous assessment 1002483-O was tabled in Parliament on 13 September 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	1002483-O1
Date of department's reports	21 August 2017 and 26 February 2018
Total days in detention	1,278 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Facility B.

12 July 2017	Transferred to Facility C.
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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.

21 August 2017 and 26 February 2018	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.
January 2018	Mr X's case was referred on a ministerial submission for consideration under s 197AB of the <i>Migration Act 1958</i> for the grant of a community placement.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to attend physiotherapy for the management of chronic pain. He was reviewed by a neurosurgeon in March 2017 who advised that it would be in the best interest of Mr X to be treated in the community. Following his transfer to Facility C Mr X declined medication for the management of his pain, and in September 2017 he reported significant improvement in his condition. In November 2017 Mr X reported a recurrence of pain and was referred for review by a neurosurgeon and physiotherapist. At the time of IHMS's report he continued to await an appointment.

IHMS further advised that Mr X engaged with the mental health team and a psychiatrist for the management of an adjustment disorder. The psychiatrist recommended that Mr X be placed in the community to better manage his mental health and chronic pain. The psychiatrist noted that Mr X's chronic pain may be associated with psychological concerns and advised that both his mental and physical health would improve upon placement in the community. In July 2017 Mr X declined medication and in December 2017 he recommenced routine appointments with a psychologist to develop strategies for managing his pain.

Ombudsman assessment/recommendation

Mr X was detained in November 2013 after arriving in Australia by sea and has remained in an immigration detention facility 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 Ombudsman's previous assessment recommended that priority be given to resolving Mr X's immigration status and that he be referred to the Minister for consideration under s 197AB for the grant of a community placement in light of his ongoing mental and physical health concerns.

On 13 September 2017 the Minister advised that he had recently considered Mr X's case under s 197AB and had declined to intervene. The Minister further advised that the department is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.

Mr X's return to an RPC is likely to be protracted due to his ongoing mental and physical health concerns.

IHMS has advised that Mr X continues to receive treatment for chronic pain and an adjustment disorder. IHMS advised that both a neurosurgeon and a psychiatrist recommended that Mr X be placed in the community to better manage his health concerns.

It appears likely that Mr X will remain in detention for a prolonged and uncertain period while he receives medical treatment, posing a serious risk to his mental and physical health.

The department advised that in January 2018 Mr X's case was referred on a ministerial submission for consideration under s 197AB for the grant of a community placement.

1. The Ombudsman notes the significant length of time Mr X has remained in detention and the advice from a psychiatrist and neurosurgeon that his health would improve upon placement in the community. In light of these concerns, the Ombudsman recommends that the Minister grant Mr X a community placement under s 197AB.
2. If the Minister declines to intervene under s 197AB, the Ombudsman recommends that Mr X's case be considered for the grant of a Final Departure Bridging visa under s 195A.