

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Ms X who has remained in immigration detention for a cumulative period of more than 48 months (four years). The previous assessment 1002236-01 was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Ms X
Citizenship	Country A
Year of birth	1989
Ombudsman ID	1002236-02
Date of department's reports	20 May 2017 and 18 November 2017
Total days in detention	1,458 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X has continued to be placed in the community. ¹	
12 September 2017	The Minister intervened under s 197AD of the <i>Migration Act 1958</i> to vary Ms X's residence determination to change her community placement address. This followed recommendations by IHMS and treating medical practitioners that Ms X's previous address was exacerbating her mental health condition.

Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to a Regional Processing Centre (RPC) on completion of her treatment.	
20 May 2017	<p>The department advised that on 24 January 2017 it had incorrectly notified Ms X that she had been invited to lodge a temporary visa application.</p> <p>In response to the department's letter Ms X submitted an application for a Safe Haven Enterprise visa (SHEV) on 7 February 2017, which was deemed invalid as Ms X continues to be barred from applying for a temporary visa in Australia. Ms X was notified of this outcome on 28 February 2017.</p>

¹ On 13 February 2017 the Minister intervened under s 197AB to grant Ms X a community placement. Ms X was placed in the community on 18 February 2017 and remains in immigration detention.

Health and welfare

International Health and Medical Services (IHMS) advised that Ms X received treatment for multiple complex mental health concerns, including a history of torture and trauma, complex post-traumatic stress disorder (PTSD) and associated chronic depression and anxiety. Following her placement in the community, Ms X was referred to a psychiatrist for review after presenting with symptoms of insomnia, nightmares and panic attacks.

She was subsequently admitted to a psychiatric hospital in February 2017 and upon being discharged in March 2017 it was recommended that Ms X be monitored by a multidisciplinary team, including a general practitioner (GP), psychiatrist and service provider. It was also recommended that Ms X's community placement address be varied as it triggered her symptoms of PTSD. Her mental health was closely monitored by medical practitioners who continued to express concerns that Ms X's symptoms of PTSD were exacerbated by her community placement address.

In May 2017 Ms X was admitted to a psychiatric hospital following a deterioration in her mental health and a treating team of medical practitioners again recommended that her community placement address be varied to prevent a relapse in her condition. IHMS advised that it supported this recommendation and upon being discharged in July 2017 Ms X was placed at a new community address. At the time of IHMS's latest report she was receiving ongoing psychiatric care at a specialist clinic.

IHMS further advised that Ms X received treatment for severe abdominal pain. She underwent investigative testing in January 2017 which identified that she had mild oesophagitis. She was referred to a gastroenterologist for review and attended an appointment at a liver clinic in April 2017. Ms X also received treatment for a shoulder condition and associated pain. She was prescribed with medication and steroid treatment in November 2016 but continued to present with ongoing pain. Her condition continued to be monitored by a GP.

25 November 2016 and 12 January 2017	Incident Reports recorded that Ms X was transported to hospital by ambulance on two occasions after presenting with severe abdominal pain.
5 December 2016	An Incident Report recorded that Ms X threatened self-harm.
12 February 2017	An Incident Report recorded that Ms X self-harmed.
28 February 2017 – 6 March 2017	Admitted to a psychiatric hospital following an incident of self-harm.
29 May 2017 – 27 July 2017 and 20 October 2017 – 6 November 2017	Admitted to a psychiatric hospital on two further occasions.

Ombudsman assessment/recommendation

Ms X was detained on 22 September 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 four years with no processing of her protection claims.

Ms X was transferred to an RPC and returned to Australia for the purpose of age determination. The department advised that Ms X has a medical condition for which she is receiving specialist treatment and that because Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.

The Ombudsman's previous assessment recommended again that priority be given to resolving Ms X's immigration status while noting ongoing mental health concerns.

On 14 June 2017 the Minister advised that under current legislation and policy settings, Ms X remains subject to return to an RPC on completion of her treatment.

The Ombudsman notes with serious concern that the department incorrectly notified Ms X that she had been invited to lodge a temporary visa application, and that in response to the department's letter Ms X submitted an application for a SHEV on 7 February 2017, which was deemed invalid. The Ombudsman notes with concern the possible impact of the department's incorrect notification on Ms X's mental and emotional state.

The Ombudsman notes with concern that Ms X's return to an RPC is likely to be protracted due to her ongoing mental and physical health concerns.

The Ombudsman notes IHMS's advice that Ms X requires ongoing specialist treatment and monitoring for complex mental health concerns, including PTSD, chronic depression, anxiety, and a history of torture and trauma.

The Ombudsman notes with concern that it appears likely that Ms X will remain in detention for a prolonged and uncertain period while she receives medical treatment. The Ombudsman further notes the government's duty of care to detainees and the serious risk to mental and physical health posed by a prolonged and uncertain period of detention.

The Ombudsman further notes that under current policy settings Ms X is only eligible to have her protection claims assessed by the government of Nauru.

The Ombudsman recommends that the department make arrangements for the processing of Ms X protection claims.