

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 first assessment 1002294-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1993
Ombudsman ID	1002294-O1
Date of DIBP's reviews	13 January 2017 and 14 July 2017
Total days in detention	1,276 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002294-O), Mr X remained at Yongah Hill Immigration Detention Centre.	
2 February 2017	Transferred to Melbourne Immigration Transit Accommodation (ITA).

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.	
19 September 2016	Mr X's case was referred on a ministerial submission for consideration under s 197AB of the <i>Migration Act 1958</i> for a community detention placement. On 12 December 2016 the Minister declined to intervene.
24 May 2017	Mr X's case was again referred on a ministerial submission for consideration under s 197AB.
14 July 2017	The department 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.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and attended specialist counselling for the management of a major depressive disorder and an adjustment disorder. He presented with symptoms of anxiety, situational stress and frustration related to his prolonged detention, and reported that he had been bullied and threatened by other detainees. In December 2016 Mr X attended a mental health review and was referred to a psychiatrist after presenting with low mood, disturbed sleep and isolating behaviour. In January 2017 IHMS advised that the immigration detention facility environment was adversely affecting his mental health and noted that a psychiatrist had recommended in October 2015 that he be placed in community detention. In February and March 2017 Mr X attended specialist counselling after disclosing thoughts of self-harm and reporting that his depression had worsened. In May 2017 a treating psychiatrist recommended that he attend ongoing psychological counselling.

IHMS further advised that Mr X received treatment for multiple physical health concerns, including cluster headaches and migraines, neuropathy and associated back pain. He was reviewed by a neurologist in November 2016 and underwent a magnetic resonance imaging scan of his brain in February 2017 which identified no abnormalities. He continued to be monitored by a general practitioner in conjunction with a specialist and was awaiting a neurology review at the time of IHMS's latest report.

Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but declined to do so.

Ombudsman assessment/recommendation

Mr X was detained on 30 September 2013 after arriving in Australia by sea and has been held in detention 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 Papua New Guinea to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.

The Ombudsman's previous assessment (1002294-O) recommended that due to his significant mental health concerns, consideration be given to placing Mr X in community detention or transferring him to Brisbane ITA, and that priority be given to resolving his immigration status.

On 8 November 2016 the Minister advised that the department had referred Mr X's case for his consideration under s 197AB and 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 physical and mental health prolonged immigration detention may pose. The Ombudsman notes with serious concern advice from IHMS that the immigration detention facility environment was adversely affecting Mr X's mental health and that a psychiatrist had recommended that he be placed in community detention.

1. In light of the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns, the Ombudsman recommends that the consideration of Mr X's case under s 197AB be expedited.

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.

2. The Ombudsman again recommends that priority is given to resolving Mr X's immigration status.