

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 1002322-O was tabled in Parliament on 15 February 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1994 |
| Ombudsman ID | 1002322-O1 |
| Date of DIBP's reports | 22 February 2017 and 23 August 2017 |
| Total days in detention | 1,276 (at date of DIBP's latest report) |

Recent detention history

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| Since the Ombudsman's previous assessment, Mr X remained at Facility B. | |
| 12 December 2016 | Transferred to Facility C. |
| 6 June 2017 | Placed in the community. ¹ |

Recent visa applications/case progression

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| 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. | |
| 1 December 2016 | Requested voluntary removal from Australia. This request was withdrawn on 15 December 2016. |
| 1 June 2017 | The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Mr X a community placement. |
| 23 August 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. |

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 a heart condition and chronic chest pain related to anxiety. Mr X was admitted to hospital in April 2017 after experiencing chest pain and underwent investigative testing which identified no abnormalities related to cardiac concerns. He was diagnosed with chest pain related to psychosocial issues caused by his prolonged detention and was prescribed with medication. At the time of IHMS's latest report he was awaiting an appointment for a cardiology review and further testing. Mr X also received treatment for leg and foot pain, gastroenterological issues and headaches.

IHMS further advised that Mr X was regularly reviewed by a psychiatrist and attended specialist counselling for the management of multiple mental health concerns, including a dependent personality disorder, anxiety, nightmares, and a history of torture and trauma. Following psychiatric review in December 2016 Mr X stated that he only signed papers to be returned to his home country as he was tired of waiting in detention. In April and May 2017 a treating psychiatrist and counsellor reported that Mr X presented with symptoms of depression and that his ongoing detention had led to a deterioration in his mood. Following his placement in the community, a general practitioner noted that Mr X's mood had significantly improved.

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| 1 December 2016 | An Incident Report recorded that Mr X threatened self-harm. |
| 22 April 2017 | An Incident Report recorded that Mr X was transported to hospital by ambulance after experiencing chest pain. |

Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but was unable to attend due to his transfer.

Information provided by Mr X's advocate

On 4 December 2016 and 22 January 2017, Mr X's advocate contacted the Ombudsman's office to express concern about Mr X's health and welfare while at Facility B and Facility C. She advised that Mr X was particularly vulnerable because of his young age and advised that he was in ongoing physical pain, and was experiencing insomnia, nightmares and constant stress as a result of his circumstances. She stated that Mr X's physical symptoms were exacerbated by the stress and uncertainty surrounding his immigration status and that his placement in Facility B had adversely affected his mental health.

Ombudsman assessment/recommendation

Mr X was detained on 11 November 2013 after arriving in Australia by sea and has been held in detention, both in a detention facility and in 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 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 recommended that priority be given to exploring options to resolve Mr X's immigration status.

On 15 February 2017 the Minister noted the recommendation and advised 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 mental and physical health prolonged and apparently indefinite detention may pose.

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.