

## 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 Ms X who has remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002227-O was tabled in Parliament on 23 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1995
<b>Ombudsman ID</b>	1002227-O1
<b>Date of DIBP's reviews</b>	11 November 2016 and 12 May 2017
<b>Total days in detention</b>	1,276 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1002227-O), Ms X remained in community detention.	
23 September 2016	Transferred to Facility B.

### Recent visa applications/case progression

The Department of Immigration and Border Protection (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.	
16 September 2016	The department advised that the Minister revoked Ms X's community detention placement under s 197AD of the <i>Migration Act 1958</i> due to a history of detention incidents involving incidents of self-harm and breaches of community detention conditions.

### Health and welfare

International Health and Medical Services (IHMS) advised that Ms X attended specialist counselling and was prescribed with medication for the management of complex mental health concerns, including depression, anxiety and post-traumatic stress disorder. Following her return to an immigration detention facility, Ms X was placed on Psychological Support Program observations on multiple occasions due to incidents of self-harm. On 29 March 2017 IHMS reported that a treating psychiatrist had recommended that Ms X be placed in community detention as she was vulnerable and the restrictive environment of an immigration detention facility could be harmful to her mental health. Her condition continued to be monitored by a psychiatrist and in May 2017 improvements in her mental health were noted.  IHMS further advised that Ms X continued to receive treatment for multiple physical health concerns, including chronic reflux issues, epigastric pain and recurrent chest pain related to situational stress and anxiety. Her condition continued to be monitored by a general practitioner and the mental health team.	
19 August 2016 – 24 December 2016	Incident Reports recorded that Ms X threatened self-harm on four occasions.

23 September 2016 – 24 December 2016	Incident Reports recorded that Ms X self-harmed on nine occasions.
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#### Recent detention incidents

4 January 2017	An Incident Report recorded that Ms X lodged a complaint alleging that she was verbally assaulted and intimidated by a male detainee. The detainee was transferred to a separate compound and Ms X advised that she did not wish for the police to be notified.
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#### Other matters

30 January 2017	The department was notified that Ms X had lodged a complaint with the Australian Human Rights Commission (AHRC). The matter remained ongoing.
22 August 2017	The Office of the Commonwealth Ombudsman opened an investigation into the revocation of Ms X's community detention placement and subsequent transfer to an immigration detention facility in light of her serious mental health concerns. The investigation remained ongoing.

#### Information provided by Ms X

<p>During an interview with Ombudsman staff at Facility B on 5 September 2017 Ms X advised that she came to Australia on her own when she was 17 years old. She advised that her family was killed in Country A in 2008 and she only has her mother left. Since being in detention, Ms X stated that she has suffered from severe mental health problems that she never had in her home country. She declined to speak about her experiences at Nauru RPC as she did not wish to remember them.</p> <p>Ms X advised that while in community detention, she lived in a unit by herself and had a support service visiting every two weeks. She stated that when she was released into the community her mental health was improving because she had her freedom and was attending monthly psychological counselling.</p> <p>Ms X stated that her return to Facility B was traumatising and her life is now unbearable. She stated that for a month she was in shock and did not believe she was back in an immigration detention facility. She advised that she attends monthly counselling and is engaging with the mental health team, however her mental and physical health concerns are directly related to her lack of freedom. She explained that if she was released from the restrictive detention environment she would be fine.</p> <p>Ms X stated that she does not feel safe at Facility B and does not participate in any activities. Ms X advised that in May 2017 her case manager told her that she would be released into the community, but now her case manager does not tell her anything and she has no idea what is happening with her case. She stated that she has not been told about the applicability of a 'final departure Bridging E visa' or the 'U.S. Deal' to her case. Ms X also said that she has no family in Australia but she has a lot of support from friends in the community.</p>
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## Ombudsman assessment/recommendation

Ms X was detained on 14 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 with no processing of her protection claims.

Ms X was transferred to an RPC and returned to Australia for medical treatment. The department advised 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 (1002227-O) recommended that the department expedite the resolution of Ms X's immigration status and consider transferring her to an alternative community detention placement closer to her support network.

On 23 November 2016 the Minister noted the recommendation and advised that under current policy settings Ms X remains subject to return to an RPC on completion of her treatment. The Minister advised that he had considered Ms X's case under s 197AD and relocated her to ensure that she receives appropriate medical 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 further notes advice from IHMS that Ms X's mental health deteriorated following her return to an immigration detention facility. The Ombudsman notes with serious concern that a psychiatrist advised that the restrictive environment of an immigration detention facility may be harmful for Ms X and recommended that she be transferred to community detention.

1. In light of these concerns and the information available, the Ombudsman recommends that the Minister consider Ms X's case under s 197AB and grant her a community detention placement.

The Ombudsman notes that under current policy settings Ms X is not eligible to have her protection claims assessed by Australia and that without an assessment of Ms X's claims it appears likely she will remain in detention indefinitely.

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