

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 Mr X who has remained in immigration detention for a cumulative period of more than 48 months (four years). The previous assessment 1002171-O was tabled in Parliament on 24 May 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Stateless (claimed), born in Country A
Year of birth	1974
Ombudsman ID	1002171-O1
Date of DIBP's reports	30 March 2017 and 28 September 2017
Total days in detention	1,458 (at date of DIBP's latest report)

Recent detention history

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

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.

28 September 2017

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.

The department further advised that on 18 May 2017 Mr X was assessed as meeting the guidelines under s 197AB of the *Migration Act 1958* for consideration of a possible community placement. The department was preparing a submission for referral to the Minister under s 197AB at the time of its latest report.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment and underwent investigative testing for multiple physical health concerns, including abdominal pain and a degenerative condition with associated pain. Mr X continued to present with ongoing pain that had not been relieved with physiotherapy and his prescribed pain relief medication. He was awaiting reviews with an orthopaedic and neurological specialist and a rheumatologist at the time of IHMS's latest report. IHMS also advised that Mr X continued to be monitored by a general practitioner for a soft tissue mass and benign mass in his abdomen and would be referred to a specialist for review as required.

IHMS further advised that Mr X was monitored by IHMS for multiple mental health concerns, including detention fatigue, depression and a history of torture and trauma. He had disengaged from the mental health team at the time of IHMS's latest report.

Other matters

28 September 2017	<p>The department advised that in early 2017 the Australian Human Rights Commission (AHRC) completed a report into a complaint lodged by Mr X which found that his detention was arbitrary, contrary to article 9 of the <i>International Covenant on Civil and Political Rights</i>.</p> <p>In early 2017 the department provided a response to the AHRC's findings and recommendations. The AHRC's report was tabled in Parliament in mid-2017.</p>
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Information provided by Mr X

<p>During an interview with Ombudsman staff on 25 May 2017 Mr X advised that his case manager told him two weeks ago that the Minister was too busy at that time to consider placing him in the community. He stated that his case manager had spoken to him about the United States resettlement deal on a few occasions. Mr X stated that he has never been involved in any behavioural concerns or incidents in detention.</p> <p>Mr X advised that he is experiencing ongoing severe back and leg pain and that the prescribed pain relief medication does not work. He also explained that he is experiencing numbness and pain in his stomach. Mr X stated that he was still waiting for surgery to treat his nasal condition.</p> <p>Mr X advised that he cannot sleep and feels like he is mentally suffering and has no hope left. He stated that he does not find IHMS mental health services helpful and does not engage in activities because he is in constant pain.</p> <p>He advised that he has three brothers and two sisters who remain in his home country whom he calls once a year. Mr X stated that his father died shortly after he arrived in Australia and his mother has also died.</p>

Ombudsman assessment/recommendation

Mr X was detained on 19 August 2013 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than four 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 Nauru 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 Mr X be referred for consideration of a community placement and that priority be given to resolving Mr X's immigration status.

On 24 May 2017 the Minister advised that Mr X was being assessed against the guidelines under s 197AB for possible referral to him for a community placement 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 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 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.

1. In light of the significant length of time Mr X has remained in detention, the absence of any recent behavioural or security concerns, and the adverse impact of Mr X's prolonged detention on his mental and physical health, the Ombudsman recommends that the department expedite its referral of Mr X's case to the Minister for consideration under s 197AB for the grant of a community placement.
2. The Ombudsman recommends that the department continue to prioritise the resolution of Mr X's immigration status.