

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 1002267-01 was tabled in Parliament on 6 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Stateless, born in Country A
Year of birth	1967
Ombudsman ID	1002267-02
Date of department's reports	15 June 2017 and 14 December 2017
Total days in detention	1,458 (at date of department'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 Home Affairs (the department) has advised that it is exploring options to resolve Mr X's immigration status.

15 June 2017 and 14 December 2017	The department advised that Mr X was identified for possible referral to the Minister under s 197AB of the <i>Migration Act 1958</i> for the grant of a community placement. On 14 December 2017 the department advised that the matter remained ongoing.
-----------------------------------	---

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for physical health concerns, including hepatitis C, heel bone spurs, hand pain, a nasal condition and urological concerns. He attended a podiatrist appointment in January 2017 and was advised to wear orthotic supports and take anti-inflammatory medication as required. In August 2017 investigative testing found no evidence of liver damage associated with hepatitis C and he was referred for further investigative testing. At the time of IHMS's latest report, he was awaiting an appointment with an ear nose and throat specialist and plastic surgeon.

IHMS further advised that Mr X received treatment for mental health concerns including anxiety and depression. Mr X presented with poor sleep and reported feeling concerned about his family's wellbeing and safety. A psychiatrist noted that Mr X's depression was related to his prolonged detention, separation from his family and concerns regarding their welfare. He was prescribed with medication and improvements in his sleep were noted. His condition continued to be monitored by the mental health team.

Other matters

9 February 2017	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman (the Office) in relation to delays in his case progression and the provision of healthcare. The complaint was investigated and on 13 February 2017 the Office notified the department that the investigation had been finalised.
The department advised that Mr X's brother and cousin reside in Australia.	

Ombudsman assessment/recommendation

Mr X was detained on 27 November 2013 after arriving in Australia by sea and has remained in an immigration detention facility for more than four years with no processing of his protection claims.

Mr X was transferred to a Regional Processing Centre and returned to Australia for medical treatment. On 14 December 2017 the department advised that it continued to explore options to resolve Mr X's immigration status.

The Ombudsman's previous assessment recommended that the department consider granting Mr X a community placement and expedite the resolution of his immigration status. The Ombudsman further recommended that arrangements for the commencement of his hepatitis C treatment be expedited if clinically required.

On 6 September 2017 the Minister advised that Mr X's health continued to be appropriately monitored and that the department was reviewing his case for re-referral to the Minister under s 197AB for the grant of a community placement. The Minister further advised that the department continued to explore options to resolve Mr X's case.

The Ombudsman notes that without an assessment of Mr X's claims it appears likely he will remain in detention indefinitely.

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. IHMS has advised that Mr X presented with symptoms of depression related to his prolonged detention and separation from his family.

The Ombudsman further notes the department's advice that it is exploring options to resolve Mr X's immigration status.

1. The Ombudsman recommends that the department make arrangements for the processing of Mr X's protection claims.

The Ombudsman further notes with concern the length of time the department has been considering Mr X's case under s 197AB for the grant of a community placement. On 11 November 2016 the department advised that Mr X's case was referred on a ministerial submission for consideration under s 197AB. The department subsequently advised on 15 June 2017 and 14 December 2017 that it continued to work on Mr X's case so that he could be referred to the Minister under s 197AB.

2. The Ombudsman recommends that the department expedite the consideration of Mr X's case under s 197AB if the matter has not already been finalised.

The Ombudsman further notes the department's advice of 15 December 2016 that Mr X's brother and sister reside in New South Wales.

3. The Ombudsman recommends that the department consider transferring Mr X to Villawood IDC to enable him to reside closer to his siblings while the department continues to consider his case under s 197AB.