

## 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 1002314-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>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1978
<b>Ombudsman ID</b>	1002314-O1
<b>Date of DIBP's reports</b>	13 February 2017 and 14 August 2017
<b>Total days in detention</b>	1,276 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous assessment (1002314-O), Mr X has remained in community detention.

### 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.

14 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.
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### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for severe injuries with associated pain. Mr X underwent surgery in September 2016 with further surgery and a referral to a specialist clinic pending at the time of IHMS's latest report. Mr X continued to be monitored by a GP and was prescribed with pain medication.

IHMS further advised that Mr X continued to attend ongoing counselling for multiple complex mental health concerns including an adjustment disorder, post-traumatic stress disorder and depression. A specialist psychologist advised that Mr X may benefit from being relocated to Brisbane where he has more social supports. Mr X attended specialist counselling sessions, was prescribed with medication and continued to be monitored by a GP.

## Ombudsman assessment/recommendation

Mr X was detained on 12 October 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 (1002314-O) recommended that priority be given to exploring options to enable the resolution of Mr X's immigration status while noting ongoing health concerns.

On 23 November 2016 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 the advice from IHMS that Mr X has a medical condition that requires ongoing 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.

1. In light of Mr X's ongoing health concerns, and a psychologist's advice that his condition may benefit from being relocated to Brisbane where he has more social supports, the Ombudsman recommends that the department consider referring Mr X for variation of his community detention placement under s 197AD.

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.