

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Ms X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X
Citizenship	Country A
Year of birth	1954
Ombudsman ID	1002477-O
Date of DIBP's reports	13 March 2017 and 4 September 2017
Total days in detention	913 (at date of DIBP's latest report)

Detention history

14 December 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. She was transferred to Facility B.
18 December 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
5 July 2014	Returned to Australia and re-detained under s 189(1). She was transferred to Facility C.
3 October 2014	Transferred to Facility D and subsequently to Nauru RPC.
14 June 2015	Returned to Australia and re-detained under s 189(1). She was transferred to Facility C.
6 April 2016	Transferred to Facility E.
15 December 2016	Placed in the community. ²

Visa applications/case progression

<p>Ms X arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that Ms X is barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of her method of arrival and transfer to an RPC.</p> <p>Ms X was returned to Australia from an RPC for medical treatment on 5 July 2014 and 14 June 2015.</p> <p>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 an RPC on completion of her treatment.</p>	
14 December 2016	The Minister intervened under s 197AB to grant Ms X a community placement.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

² Ms X was granted a placement in the community under s 197AB and remains in immigration detention.

4 September 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical treatment.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X received treatment for multiple complex physical health conditions, including type 2 diabetes, osteoarthritis, high blood pressure, high cholesterol, and endometrial cancer.</p> <p>Ms X was diagnosed with endometrial cancer in October 2016. She underwent chemotherapy and radiotherapy and was admitted to hospital on multiple occasions to undergo surgical procedures and receive treatment for sepsis. Following the conclusion of her chemotherapy treatment, Ms X reported experiencing numbness in her fingers and toes. She continued to be cared for by her daughter and monitored by an oncologist and a general practitioner (GP).</p> <p>IHMS also advised that in December 2014 Ms X was diagnosed with type 2 diabetes and related sensory impairment and kidney concerns. Her condition was poorly controlled due to difficulty educating Ms X about her condition and encouraging compliance with medication and implementing lifestyle adjustments because of language barriers and her distress about her other medical concerns. Following Ms X's placement in the community, Ms X's daughter presented to a specialist on her mother's behalf and was thoroughly educated on her mother's condition and treatment requirements. In March 2017 it was noted that Ms X's blood sugar levels were normal and her condition continued to be managed at home by her daughter and monitored by a GP.</p> <p>IHMS further advised that Ms X received treatment for multiple mental health concerns, including major depression, anxiety and an adjustment disorder related to her prolonged detention. She was hospitalised in June 2015 following a deterioration in her mental health and in May 2016 a treating psychiatrist recommended that Ms X be placed in the community to be reunified with her daughter. In August 2016 she was reviewed by a psychiatrist who reported that Ms X was non-compliant with prescribed medication, displaying isolating behaviour and refusing to engage with the mental health team as a protest against her detention placement. Ms X re-engaged with the mental health team in October 2016 and it was reported that her emotional state and compliance with medication had significantly improved since being placed in the community with her daughter. A treating specialist reported in January 2017 that Ms X continued to present as emotionally distressed due to her medical concerns but was coping far better with her daughter's support.</p>	
15 June 2015 – 27 August 2015	Admitted to a psychiatric hospital.
30 July 2015	An Incident Report recorded that Ms X threatened self-harm.
21 October 2015 – 9 December 2016	Incident Reports recorded that Ms X was transported to hospital by ambulance on three occasions.
24 January 2016 – 9 December 2016	Incident Reports recorded that Ms X self-harmed on three occasions.

Other matters

Ms X is placed in the community with her daughter, Ms Y, who resides in the community on a bridging visa.

Ombudsman assessment/recommendation

Ms X was detained on 14 December 2013 after arriving in Australia by sea and has been held in detention, both in a detention facility and the community, for a cumulative period of more than two and a half years.

Ms X was transferred to an RPC and returned to Australia for medical treatment on two occasions. 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 department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical treatment.

The Ombudsman notes the advice from IHMS that Ms X has medical conditions that require 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. IHMS has reported that Ms X has serious mental and physical health concerns that have been better managed following her placement in the community and with the support of her daughter.

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 for a prolonged period.

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