

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 1002312-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1986
Ombudsman ID	1002312-O1
Date of DIBP's reports	8 February 2017 and 9 August 2017
Total days in detention	1,276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Melbourne Immigration Transit Accommodation with his wife Ms Y. ¹	
1 May 2017	Mr X and Ms Y were placed in the community. ²

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.	
10 April 2017	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Mr X and Ms Y a community placement.
9 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.

Health and welfare

International Health and Medical Services advised that Mr X received treatment and attended specialist counselling for the management of an adjustment disorder with depressed mood, insomnia and a history of torture and trauma. He was reviewed by a general practitioner as required.	
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¹ Ms Y is the subject of Ombudsman assessment 1002519-O1.

² Mr X and Ms Y were granted a placement in the community under s 197AB and remain in immigration detention.

Ombudsman assessment/recommendation

Mr X was detained on 25 July 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 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 recommended that consideration be given to placing Mr X in the community and that priority be given to exploring options to enable the resolution of his immigration status.

On 1 March 2017 the Minister advised that the department was reviewing Mr X for referral under s 197AB and 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 recommends that the department continue to prioritise the resolution of Mr X's immigration status.