

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABELING 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 four years. The previous assessment 1002294-O1 was tabled in Parliament on 29 November 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1993
<b>Ombudsman ID</b>	1002294-O2
<b>Date of department's report</b>	12 January 2018
<b>Total days in detention</b>	1,458 (at date of department's 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 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.

May 2017	Mr X's case was referred on a ministerial submission for consideration under s 197AB of the <i>Migration Act 1958</i> for the grant of a community placement. The matter remained ongoing at the time of the department's report.
January 2018	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 (IHMS) advised that Mr X continued to receive treatment for the management of multiple medical conditions. He was referred to a specialist clinic and an appointment was scheduled for December 2017. IHMS reported that a specialist previously recommended that Mr X undergo treatment for his condition which he was interested in trying as he hoped to cease his prescribed medication. He attended physiotherapy for the management of his pain and was referred for investigative testing which remained pending at the time of IHMS's report.

IHMS advised that Mr X continued to receive treatment for mental health conditions. In September 2017 Mr X advised that he did not wish to schedule further appointments with the mental health team as he did not find them helpful. He continued to take prescribed medication for the management of his symptoms.

September 2017	An Incident Report recorded that Mr X threatened self-harm.
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### **Information provided by Mr X**

During a telephone conversation with Ombudsman staff in April 2018 Mr X advised that he had been transferred to Australia for medical treatment and had been waiting for a decision on whether to be granted a community placement for almost a year.

Mr X explained that it was very difficult for him to remain in a detention facility for such a long time. He advised that he was mentally unwell and that he suffered from nightmares. He said that the mental health team could not do anything to help him and only increased his prescribed medication. He said that he felt there had been no progress in his circumstances and that he was feeling lost.

Mr X said that when he was placed at Facility C he was closer to an Australian family in the community who visited and supported him. He expressed his wish to visit the family in the future but that he did not want to be transferred again to another facility. Mr X said that he just wished to be placed in the community.

### **Ombudsman assessment/recommendation**

Mr X was detained in September 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 Ombudsman's previous assessment recommended that in light of the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns, consideration of Mr X's case under s 197AB for the grant of a community placement be expedited. The Ombudsman further recommended that priority be given to resolving Mr X's immigration status while noting ongoing mental health concerns.

On 29 November 2017 the Minister advised that Mr X had been referred to him for consideration under s 197AB for a possible community placement. The Minister further advised that the department is supporting the Government of Papua New Guinea to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia.

Mr X's return to an RPC is likely to be protracted due to his ongoing mental and physical health concerns.

It appears likely that Mr X will remain in detention for a prolonged and uncertain period while he receives medical treatment, posing a serious risk to his mental and physical health.

1. In light of the significant length of time Mr X has remained in detention and the impact of his placement in a detention facility on his mental health as indicated during a telephone conversation with Ombudsman staff, the Ombudsman recommends that the Minister finalise the consideration of Mr X's case under s 197AB and grant him a community placement.
2. If the Minister declines to intervene under s 197AB, the Ombudsman recommends that Mr X's case be considered under s 195A for the grant of a Final Departure Bridging visa.