

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 Ms X who has remained in immigration detention for a cumulative period of more than 36 months (three years). The previous assessment 1002519-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	Ms X
Citizenship	Country A
Year of birth	1972
Ombudsman ID	1002519-O1
Date of DIBP's reports	7 April 2017 and 6 October 2017
Total days in detention	1,094 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X remained at Melbourne Immigration Transit Accommodation with her husband Mr Y. ¹	
1 May 2017	Ms X and Mr 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 Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to a Regional Processing Centre (RPC) on completion of her treatment.	
10 April 2017	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Ms X and Mr Y a community placement.
6 October 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.

Health and welfare

International Health and Medical Services (IHMS) advised that Ms X engaged with the mental health team and counselling for the management of depression, an adjustment disorder, and a history of torture and trauma. In December 2016 a psychologist noted deterioration in Ms X's mental health associated with her placement in an immigration detention facility and recommended that she be placed in the community. Following her placement in the community Ms X was monitored by a general practitioner and attended specialist counselling. IHMS further advised that Ms X received treatment and continued to be monitored for a number of physical health concerns including chronic back pain, cataracts, dental issues and gastrological, urological and gynaecological concerns.	
3 October 2017	An Incident Report recorded that Ms X and Mr Y reported suicidal ideation.

¹ Mr Y is the subject of Ombudsman assessment 1002312-O1.

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

Ombudsman assessment/recommendation

Ms X was detained on 22 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 years.

Ms X was transferred to an RPC and returned to Australia for medical treatment. 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 Determinations of Ms X while she remains temporarily in Australia for medical treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving Ms X's immigration status and that the department expedite the assessment of her case under s 197AB for a community placement.

On 1 March 2017 the Minister advised that under current legislation and policy settings, Ms X remains subject to return to an RPC on completion of her treatment. The Minister further advised that Ms X had refused the conditions associated with an assessment for a community placement but the department continued to follow-up this matter as a priority. Ms X was granted a community placement on 10 April 2017.

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 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 the department continue to prioritise the resolution of Ms X's immigration status.