

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 36 months (three years).

The first assessment 1002449-O was tabled in Parliament on 15 February 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	1984
Ombudsman ID	1002449-O1
Date of DIBP's reviews	13 January 2017 and 14 July 2017
Total days in detention	1,094 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002449-O), Mr X has remained in community detention with his wife and children.¹

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 wife's medical treatment.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple physical health concerns, including chronic back and ankle pain and a wrist injury. On 20 January 2017 and 27 January 2017 he underwent investigative testing for his chronic back and ankle pain and was referred to an orthopaedic specialist. In January and February 2017 he underwent investigative testing on his wrist following a fall and was diagnosed with wrist osteoarthritis. The specialist advised that he undergo a temporary procedure to relieve his wrist pain and that another surgery will be necessary in the future. He was awaiting a physiotherapy review at the time of IHMS's latest report and continued to be monitored by a general practitioner.

IHMS further advised that Mr X continued to receive trauma-focused psychological treatment for mental health and parenting support. In January and February 2017 a specialist support service recommended that Mr X attend ongoing counselling due to recent physical injuries that he and his wife had sustained and the impact on their capacity to support their children. The service further advised that it was unlikely his psychological functioning would improve in the foreseeable future and requested that Mr X and his family receive assistance at home from a carer or nanny.

¹ Mr X's wife, Ms Y, and their daughter, Miss Z, are the subjects of Ombudsman assessments 1002411-O1 and 1002633-O respectively. Their son, Master P, was born in Australia in May 2016 and detained on 16 June 2016. He has been in detention for less than two years and is not subject to review under s 486N. On 14 July 2017 the department provided a combined review for Mr X, Ms Y and Miss Z, and advised that the family would be reported on together in future.

Other matters

13 January 2017	The department advised that his wife's complaint with the Australian Human Rights Commission remained ongoing.
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Ombudsman assessment/recommendation

Mr X was detained on 27 August 2013 after arriving in Australia by sea and has been held in detention for a cumulative period of more than three years with no processing of his protection claims.

Mr X was transferred to an RPC and returned to Australia to support his wife, Ms Y, whilst she receives 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 wife's treatment.

The Ombudsman's previous assessment (1002449-O) recommended that priority be given to resolving Mr X's immigration status.

On 15 February 2017 the Minister 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 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 with serious concern advice from IHMS that both Mr X and his wife suffer from mental health issues and were experiencing physical and psychological difficulty caring for their young children. The Ombudsman further notes that a specialist support service requested that Mr X and his family receive formal assistance at home from a carer or nanny. The Ombudsman recommends that the department explore options for enabling Mr X and his family to receive the assistance of a carer or nanny.

The Ombudsman notes that under current policy settings Mr X is not eligible to have his protection claims assessed in Australia and that without an assessment of Mr X's claims it appears likely he will remain in detention indefinitely.

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