

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Mr X and his sons, Master Y and Master Z. Mr X has remained in immigration detention for a cumulative period of more than 66 months (five and a half years) and Master Y and Master Z remained in immigration detention for a cumulative period of more than 54 months (four and a half years).¹ The previous assessment 1001592-O was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X (and sons)
Citizenship	Country A
Year of birth	1958
Total days in detention	2,006 (at date of department's latest report)

Family details

Family members	Master Y (son)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	2006	2007
Total days in detention	1,787 (at date of department's latest report)	1,787 (at date of department's latest report)

Ombudsman ID	1001592-O1
Date of department's reports	10 May 2017 and 6 November 2017

Recent detention history

Since the Ombudsman's previous assessment, Mr X has remained at Facility E and Master Y and Master Z continued to be placed in the community under the care of a service provider. ²	
19 December 2017	Master Y and Master X were granted Temporary Protection visas (TPV) and released from immigration detention. Mr X remained at Facility E.

¹ Mr X first arrived in Australia on 11 October 1999 and remained in immigration detention until he was granted a visa on 24 May 2000. He subsequently departed Australia and arrived again by sea on 15 December 2012 with Master Y and Master Z. For the purposes of reporting under s 486N, Master Y and Master Z's timeline in detention has been aligned with Mr X's and the family is reported on together.

² Master Y and Master Z were granted a placement in the community under s 197AB and remained in immigration detention. On 10 May 2017 the department advised that they visited their father twice a week at Facility E.

Recent visa applications/case progression

22 March 2017	The family's TPV application was refused. The Department of Home Affairs (the department) advised that the privacy breach caused by the unintentional release of personal information ³ was taken into account when considering the family's protection claims.
28 March 2017	The family's case was referred to the Immigration Assessment Authority (IAA) for review.
10 May 2017	The IAA remitted the family's case to the department for reconsideration with the direction that there are substantial grounds to believe that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the family will suffer significant harm.
22 June 2017	Issued with a Notice of Intention to Consider Refusal (NOICR) of the family's TPV under s 501 of the <i>Migration Act 1958</i> . Mr X provided a response on 14 August 2017. The matter remained ongoing at the time of the department's latest report.
28 June 2017	Mr X's case was found not to meet the guidelines for referral to the Minister under s 197AB for consideration of a community placement.
19 December 2017	Master Y and Master Z were granted TPVs.

Other legal matters

6 November 2017	The department advised that the court matter in relation to the alleged sexual assault of Master Y remained ongoing. A hearing is scheduled for mid-March 2018.
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³ In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple mental health concerns, including an adjustment disorder with depressive symptoms, a history of torture and trauma, and low mood and anxiety related to his prolonged detention and separation from his family.

During reviews with a psychiatrist in May and August 2017, Mr X presented with symptoms of anxiety, sadness and frustration about his situation and his inability to support his family. He declined medication as he was concerned about possible side effects. A treating psychiatrist reported that his mental health would improve if he was released from immigration detention and reunified with his children. The psychiatrist reported that this would help him to recover from his past and to identify himself as a father again. IHMS advised that he continued to regularly engage with the mental health team for ongoing counselling.

IHMS further advised that Mr X continued to manage his type 2 diabetes, high cholesterol and high blood pressure with prescribed medication and implemented diet and lifestyle modifications recommended by a general practitioner (GP).

Master Y

IHMS advised that Master Y was monitored by a GP for multiple interrelated mental and physical health concerns, including asthma, allergies, enuresis, attention deficit hyperactivity disorder (ADHD), behavioural issues and anxiety related to his past traumatic experience of an alleged sexual assault. He attended counselling and was awaiting specialist reviews with a paediatrician and children's clinic at the time of IHMS's latest report.

Master Z

IHMS advised that Master Z was monitored by a GP for interrelated mental and physical health concerns, including enuresis, ADHD, and behavioural issues related to past trauma. He attended specialist counselling and was awaiting a specialist review at the time of IHMS's latest report.

2 July 2017

Attended hospital after presenting with abdominal pain, vomiting and a fever.

Recent detention incidents

21 March 2017

An Incident Report recorded that Master Y and Master Z disclosed to a youth worker that they were allegedly sexually assaulted while they were at an immigration detention facility.

Other matters

22 September 2017

The Australian Human Rights Commission requested that the department provide further information in relation to Mr X's complaint, lodged on 1 May 2015. On 30 October 2017 the department provided a response. The matter remained ongoing at the time of the department's latest report.

The department advised that Mr X's first ex-wife is residing lawfully in the community in New South Wales.

Information provided by Mr X

During an interview with Ombudsman staff on 7 September 2017, Mr X advised that he and his five sons had been recognised by the United Nations as refugees. He said that his three eldest sons reside in the community on permanent visas and he had lodged TPV applications for his younger sons. He advised that he was receiving legal assistance from a migration agent.

Mr X disclosed that his two younger sons were allegedly sexually assaulted by another detainee while the family was detained at an immigration detention facility. He said that his case manager was aware of the incident and the matter was being investigated. He advised that he felt shattered, sick and distressed about the incident and had become moody and bad tempered. He said that he had attended counselling, but was not sure whether it was helpful.

Mr X advised that it was difficult being separated from his sons and he hoped to be released from immigration detention so that the family could move on with their lives.

Ombudsman assessment/recommendation

Mr X was initially detained on 11 October 1999 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than five and a half years.

Master Y and Master Z were detained on 15 December 2012 after arriving in Australia by sea and remained in immigration detention, both in a detention facility and the community, for more than four and a half years.

The family's TPV application was refused on 22 March 2017. The IAA reviewed the decision and on 10 May 2017 the application was remitted to the department with the direction that there are substantial grounds to believe that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the family will suffer significant harm.

On 22 June 2017 the department issued the family with a NOICR of their TPV application under s 501 and Mr X provided a response on 14 August 2017.

Master Y and Master Z were granted TPVs on 19 December 2017 and released from immigration detention.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose. IHMS has advised that in August 2017 a psychiatrist reported that Mr X's mental health has been adversely affected by his prolonged detention in an immigration facility and his separation from his children. IHMS further advised that reunification with his family would help in his recovery.

The Ombudsman also notes that in August 2015 Mr X was convicted of offences, including malicious damage and fraud, and was placed on a good behaviour bond for one year.

In light of the significant length of time Mr X has remained in detention and the adverse impact of the family's separation on his mental health, the Ombudsman recommends that Mr X be considered under s 197AB for the grant of a community placement.