

ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Ms X and her sons who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X (and sons)
Citizenship	Country A
Year of birth	1977

Family details

Family members	Master Y (son)	Master Z (son)	Master P (son)
Citizenship	Country B	Country B	Country B
Year of birth	2002	2003	2006

Ombudsman ID	1002527-O
Date of DIBP's reviews	12 October 2016 and 12 April 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

27 July 2014	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to Curtin Immigration Detention Centre.
1 August 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
18 October 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Bladin Alternative Place of Detention.
19 October 2014	Transferred to Melbourne Immigration Transit Accommodation.
26 February 2016	Transferred to community detention.

Visa applications/case progression

<p>Ms X and her sons arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that the family is barred under ss 46A and 46B from lodging a valid protection visa application as a result of their method of arrival and transfer to an RPC.</p> <p>The family was returned to Australia for medical treatment on 18 October 2014.</p> <p>The department has advised that under current policy settings the family is not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.</p>

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

23 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.
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Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X presented with depressed mood, difficulty sleeping and symptoms of an adjustment disorder related to situational stress and concerns about a pending surgery. Ms X also presented with limited coping strategies, associated with a suspected history of torture and trauma. She was reviewed by a psychologist and attended regular counselling. Following her transfer to community detention, her condition continued to be monitored by a general practitioner (GP) and no concerns were reported.</p> <p>IHMS further advised that Ms X received ongoing treatment for scarring related to a previous injury. She underwent a number of surgical procedures and was scheduled to attend a follow-up review at a specialist clinic on 20 February 2017.</p>	
20 December 2015	IHMS advised that Ms X self-harmed and was subsequently closely monitored by detention centre staff.
23 December 2015	An Incident Report recorded that Ms X disclosed suicidal thoughts and was placed on Psychological Support Program observations.
10 August 2016	An Incident Report recorded that Ms X threatened self-harm.

Master Y

<p>IHMS advised that Master Y disclosed a history of torture and trauma and received treatment for symptoms of detention fatigue. In November 2015 a psychologist noted that he constantly ruminated about the past and presented with hopelessness, depression and sleeping difficulties. A specialist counsellor noted that his mother was concerned about his escalating anger and aggression relating to the restricted detention environment. Following his transfer to community detention, his condition continued to be monitored by a GP.</p>	
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Master Z

<p>IHMS advised that Master Z attended specialist counselling for management of stress associated with his mother's health and concerns about his family's situation. In April 2016 he was referred to the mental health team (MHT) after reporting difficulty sleeping and nightmares. IHMS further advised that Master Z was prescribed with medication for chronic migraines. He was referred to a paediatrician who noted that the headaches may be due to psychological concerns.</p> <p>Following his transfer to community detention, a paediatrician reported that his mental health had improved and the frequency of his headaches had reduced. He continued to be monitored by a GP and a paediatric review was scheduled for May 2017.</p>	
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Master P

<p>IHMS advised that Master P has a history of torture and trauma and attended regular psychological counselling. On 19 February 2016 Master P disclosed that he had self-harmed in response to damaging remarks about his mother. He was placed on Supportive Monitoring and Engagement observations and reviewed by the MHT.</p> <p>IHMS further advised that Master P received treatment for a sprained hand.</p>	
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Ombudsman assessment/recommendation

Ms X and her sons were detained on 27 July 2014 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years with no processing of their protection claims.

The family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because the family arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that Ms X has a medical condition that requires ongoing 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 the family is not eligible to have their protection claims assessed in Australia and that without an assessment of their claims it appears likely they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving the family's immigration status.