

## 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 42 months (three and a half years). The previous assessment 1002413-O was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1997
<b>Ombudsman ID</b>	1002413-O1
<b>Date of department's reports</b>	25 May 2017 and 22 November 2017
<b>Total days in detention</b>	1,276 (at date of department's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Perth Immigration Residential Housing. <sup>1</sup>	
29 December 2016	Transferred to an Alternative Place of Detention (APOD) <sup>2</sup> in the community.

### Recent visa applications/case progression

12 December 2016	The Minister declined to intervene under s 197AB of the <i>Migration Act 1958</i> to grant Mr X a community placement.
22 November 2017	The Department of Home Affairs (the department) advised that consideration of Mr X's Safe Haven Enterprise visa (SHEV) application remained ongoing.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X had previously received treatment for a history of behavioural concerns, attention deficit hyperactivity disorder and incidents of self-harm. During this assessment period Mr X was reviewed by the mental health team which did not identify any acute mental health concerns. In February 2017 it was noted that Mr X was not at risk of self-harm and did not require medication. In July 2017 a psychiatrist reported that Mr X's mental state was stable and that he did not present with any symptoms of a significant psychiatric disorder. The psychiatrist advised that the risk in placing Mr X in the community was very low. In October 2017 IHMS reported that Mr X's mental health continued to be stable and that he remained positively focused on his family and their future.</p> <p>Mr X attended an audiology appointment in December 2016 and his hearing was assessed to be within a normal range.</p>
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<sup>1</sup> The Ombudsman's previous assessment incorrectly recorded that Mr X had been transferred to a community placement address.

<sup>2</sup> Mr X resides in an APOD with his family under temporary arrangements and remains in immigration detention.

## Other matters

The department advised that Mr X's wife, Ms Y, was transferred to a Regional Processing Centre (RPC) and returned to Australia for medical treatment. Ms Y remains liable for transfer back to an RPC on completion of her treatment. Due to their differing immigration pathways and time spent in detention, Mr X and his wife are reported on separately under s 486N. Ms Y is the subject of Ombudsman assessment 1002255-O2.

The department advised that Mr X and his wife's son, Master Z, was born in Australia in January 2017 and detained on 27 January 2017. He has been in detention for less than two years and is not subject to reporting under s 486N. The department further advised that Master Z will take on the same immigration pathway as his father.

Mr X and his family reside together in the community under APOD arrangements.

## Ombudsman assessment/recommendation

Mr X was detained on 11 March 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community under APOD arrangements, for more than three and a half years.

Mr X continued to await the outcome of his SHEV application at the time of the department's latest report.

The Ombudsman notes with serious concern the department's advice that Mr X, and his son, Master Z, remain on a different immigration pathway to his wife, Ms Y, and the long-term implications of the family's separate immigration pathways.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose.

IHMS has advised that Mr X's mental health was stable and that he was positively focused on his family and their future. A treating psychiatrist advised that the risk of placing Mr X in the community was very low.

In light of the significant length of time Mr X has remained in detention, the absence of any recent behavioural or security concerns, and the advice of IHMS that Mr X's mental state was stable, the Ombudsman recommends that Mr X be considered under s 197AB for the grant of a community placement.