

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 and his sons who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002273-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and sons)
Citizenship	Country A
Year of birth	1974

Family details

Family members	Master Y (son)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	2007	2010

Ombudsman ID	1002273-O1
Date of DIBP's reports	24 December 2016 and 26 June 2017
Total days in detention	1,278 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X and his sons continued to be placed in the community. ¹	
27 September 2016	Mr X stated an intention to temporarily relinquish care of his sons due to his health concerns. Mr X's sons were removed from his custody the following day and placed under the care of a service provider.
19 October 2016	Mr X was transferred to Facility B following the revocation of his community placement.
3 January 2017	Mr X was transferred to Facility C.

Recent visa applications/case progression

The Department of Immigration and Border Protection (the department) has advised that under current policy settings Mr X and his sons are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to a Regional Processing Centre (RPC) on completion of Mr X's treatment.	
7 October 2016	The Minister revoked Mr X's community placement under s 197AD of the <i>Migration Act 1958</i> following an incident in the community.
23 November 2016	Mr X requested removal to Country A for himself and his sons. On 17 January 2017 he withdrew the request.

¹ Mr X and his sons were granted a placement in the community under s 197AB and remain in immigration detention.

23 February 2017	Found not to meet the guidelines for referral to the Minister under s 197AD.
20 April 2017	The department initiated an assessment of Mr X's case against the guidelines for referral to the Minister under s 197AB for Mr X to be reunified with his sons in the community. The matter remained ongoing.
18 May 2017	A judicial conference was held at a children's court to consider care arrangements for Mr X's sons while they remain separated from him. The court determined that Mr X presented no risk to his sons and a Department of Health and Human Services Child Protection (DHHSCP) withdrew their involvement from the case.
26 June 2017	The department advised that it continues to work with a service provider and stakeholders to provide care and support services for Mr X's sons while he remains in an immigration detention facility. The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X and his sons while they remain temporarily in Australia for medical treatment.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling for the management of multiple mental health concerns, including an adjustment disorder, chronic stress and nightmares, and a history of torture and trauma. During a psychiatric review in September 2016 Mr X disclosed that he was experiencing perceptual abnormalities as well as possible auditory hallucinations but declined to trial antipsychotic medication. A psychologist recommended that Mr X be assessed for a possible delusional disorder and notified the DHHSCP of their concerns for Master Y and Master Z's wellbeing should they be returned to their father's care. However in January 2017 a treating psychiatrist reported that Mr X displayed no delusional symptoms and had the capacity to make decisions. IHMS reported that Mr X's focus for the future was reunifying with his sons and he continued to engage with the mental health team and attend counselling.</p> <p>IHMS further advised that Mr X continued to be reviewed and receive treatment for multiple physical health concerns. He attended physiotherapy and was prescribed with medication for the management of chronic back and hip pain. In February 2017 he underwent a computed tomography and magnetic resonance imaging scan which identified spinal osteoarthritis and a hip abnormality. He was referred to an orthopaedic specialist for review.</p> <p>Mr X underwent a major surgical procedure in 2014. He attended a yearly follow-up review with an urologist in March 2017 who reported that no further treatment was required but recommended he attend yearly reviews. He also underwent a surgical procedure for treatment of a bowel ulcer in June 2016 and was referred to a gastroenterologist in May 2017 for a follow-up review after reporting ongoing epigastric pain. He continued to be monitored by a general practitioner (GP) and was awaiting appointments with a gastroenterologist and orthopaedic specialist at the time of IHMS's latest review.</p>	
3 June 2016	Admitted to hospital to undergo a surgical procedure for treatment of a bowel ulcer.

Master Y

IHMS advised that Master Y was regularly reviewed by a paediatrician and psychologist for multiple mental health concerns, including post-traumatic stress disorder (PTSD), depression, behavioural issues and anxiety related to past trauma and separation from his father. A treating paediatrician noted that Master Y's mental health is strongly impacted by his father's own mental health concerns. Master Y underwent preliminary testing and was identified as having a possible cognitive impairment related to his complex trauma history and lack of prior education.

Master Y was referred to a child specialist service for investigation after allegedly displaying inappropriate behaviour towards his brother and other children. The child specialist service reported that this behaviour was related to his sense of disconnection and hopelessness resulting from extensive trauma and attachment difficulties. IHMS advised that based on the clinical assessments of specialists and care providers, Master Y was at his best psychologically when he was living in the community with his father. Master Y's paediatrician strongly recommended that a community placement with his father remains in Master Y's best interests and would improve his wellbeing.

Master Y and his brother's care provider lodged a request for increased staff in the home to develop and implement trauma-informed interventions and preventative strategies for the children. The outcome of this request remained unclear at the time of IHMS's latest review and Master Y continued to be monitored by a paediatrician in conjunction with other health professionals.

Master Z

IHMS advised that Master Z attended regular counselling for the management of PTSD and a history of torture and trauma. While at times presenting with feelings of anger and restlessness, Master Z is able to regulate his emotions and form friendships with other children at school.

IHMS further advised that Master Z was regularly reviewed by a paediatrician for physical health concerns. The paediatrician provided Master Z and his carers with lifestyle education and referred him to a specialist clinic for review.

Recent detention incidents

31 August 2016	An Incident Report recorded that Mr X allegedly sexually assaulted an employee of a service provider. The incident was referred to the police for investigation and on 16 September 2016 the police advised that the matter was finalised.
29 September 2016	An Incident Report recorded that Master Y allegedly displayed inappropriate behaviour toward another child.
26 March 2017 – 1 June 2017	Incident Reports recorded that Master Y displayed abusive and aggressive behaviour toward his brother and service provider staff.

Information provided by Mr X

During an interview with Ombudsman staff on 21 June 2017 Mr X advised that he is most concerned about his separation from his children who remain in the community. His sons visit him in immigration detention, and for the last few weeks he has been able to visit them at home once a week for two hours. He also talks to them over the phone.

Mr X stated that he was at Nauru RPC for one year and had to wait a long time to undergo a major surgical procedure. Mr X advised that after the procedure the doctor had instructed that he rest in bed for a few weeks, which made it very difficult for him to cook for and take care of his children since he had no help to look after them at the time.

Mr X advised that he does not have a lawyer and uses an interpreter to speak with his case manager. He feels that Serco officers treat him and other detainees harshly and claimed that he is handcuffed every time he leaves the detention facility. He feels that IHMS staff listen and explain well, but sometimes they are dismissive of his health concerns.

He feels that his mental health has improved and stated that child protection services have no issues with him having his children back. He advised that his case manager told him a few weeks ago that he would soon be released into the community with his children. Mr X advised that he withdrew his request for removal to Country A and only agreed to return because he was afraid at the time about the uncertainty surrounding his immigration pathway and the prospect of remaining in an immigration detention facility.

Ombudsman assessment/recommendation

Mr X and his sons were detained on 24 July 2013 after arriving in Australia by sea and have been held in detention, both in a detention facility and the community, for a cumulative period of more than three and a half years.

Mr X and his sons were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Mr X and his sons arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of Mr X's treatment.

The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X and his sons while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving Mr X and his sons' immigration status.

On 8 November 2016 the Minister advised that under current legislation and policy settings, Mr X and his sons remain subject to return to an RPC on completion of their 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.

IHMS advised that based on the clinical assessments of specialists and care providers, Master Y was at his best psychologically when he was living in the community with his father. A paediatrician strongly recommended that a community placement with his father remains in Master Y's best interests and would improve his wellbeing. The Ombudsman further notes the determination of a children's court in May 2017 that Mr X presents no risk to his sons.

1. 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 adverse impact of the family's separation on their mental health, the Ombudsman recommends that Mr X's case be referred to the Minister for consideration under s 197AB for the grant of a community placement to enable him to be reunified with his sons.

The Ombudsman notes that under current policy settings Mr X and his sons are not eligible to have their protection claims assessed by Australia and that without an assessment of Mr X and his sons' claims it appears likely they will remain in detention for a prolonged period.

2. The Ombudsman recommends that the department continue to prioritise the resolution of Mr X and his sons' immigration status.