

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Mr X and his son who have remained in immigration detention for a cumulative period of more than 24 months (two years).

Name	Mr X (and son)
Citizenship	Country A
Year of birth	1973

Family details

Family members	Master Y (son)
Citizenship	Country A
Year of birth	2001

Ombudsman ID	1002828-O
Date of department's report	11 January 2018
Total days in detention	730 (at date of department's report)

Detention history

30 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention, Christmas Island.
1 October 2013	Transferred to Christmas Island Immigration Detention Centre.
2 October 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
14 January 2016	Returned to Australia and re-detained under s 189(1). They were transferred to Brisbane Immigration Transit Accommodation.
15 January 2016	Transferred to Facility B.
1 April 2016	Placed in the community. ²

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

² Mr X and his son were granted a placement in the community under s 197AB and remain in immigration detention.

Visa applications/case progression

Mr X and his son arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Home Affairs (the department) has advised that Mr X and his son are barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of their method of arrival and transfer to an RPC.

Mr X and his son were returned to Australia from an RPC for medical treatment on 14 January 2016.

The department has advised that under current policy settings Mr X and his son are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.

31 March 2016	The Minister intervened under s 197AB to grant Mr X and his son a community placement.
11 January 2018	The department advised that Mr X and his son had been identified for referral to the Minister for consideration under s 195A for the grant of a bridging visa.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received ongoing treatment for multiple serious medical conditions, including cancer, type 2 diabetes, high blood pressure and high cholesterol and carpal tunnel syndrome.

Mr X was referred for specialist review and investigative testing in March 2016 after presenting to a general practitioner (GP) with small lumps on his neck. In August 2016 haematology specialists diagnosed Mr X with lymph gland cancer and referred him for further testing. He underwent radiotherapy treatment between November and December 2016 and in April 2017 treating specialists reported that he was recovering well from the treatment. Mr X was required to attend follow-up specialist reviews on a regular basis and continued to be monitored by a GP.

Mr X underwent surgery for treatment of his carpal tunnel syndrome in February 2017 and continued to be monitored for this condition by a GP. Mr X's diabetes, high blood pressure and high cholesterol were managed with prescribed medication and dietary modifications.

IHMS further advised that Mr X disclosed a history of torture and trauma. While at an immigration detention facility, Mr X engaged with the mental health team for low mood and stress related to his son's behavioural concerns and complex family issues. He previously attended specialist counselling at Nauru RPC but declined to attend further sessions upon his arrival to Australia.

29 March 2016	An Incident Report recorded that Mr X was transported to hospital by ambulance after he collapsed following his son's threatened self-harm.
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Master Y

IHMS advised that Master Y received treatment for complex interrelated mental and physical health concerns, including enuresis, chronic headaches, post-traumatic stress disorder (PTSD), separation anxiety, depression and a history of torture and trauma.

In March 2016 Master Y was placed on Psychological Support Program and Supportive Monitoring and Engagement observations and was closely monitored by Serco officers after he self-harmed and threatened self-harm on multiple occasions. IHMS reported that Master Y previously attended specialist counselling while at Nauru RPC, but declined to attend further sessions.

IHMS advised that Master Y's enuresis was related to past experiences of torture and trauma and to current situational stress. Master Y's father reported that this condition started after Master Y was kidnapped in his home country in 2007. While at an immigration detention facility, Master Y was reviewed by a psychiatrist on several occasions and was prescribed with medication for the ongoing management of his enuresis. Master Y was referred to a urology clinic for review in October 2016 after reporting that his condition had not improved and that it was affecting his sleep and school attendance. Master Y also presented with increased levels of anger and agitation and difficulty engaging with other children.

IHMS further advised that Master Y was reviewed by a child psychiatrist after he reported experiencing chronic headaches. The psychiatrist advised that Master Y's headaches were likely due to psychological distress and in February and March 2016 Master Y was reviewed by a neurologist and underwent investigative testing which found no organic cause for his headaches. Master Y was prescribed with pain relief medication for the management of this condition.

11 – 29 March 2016	Incident Reports recorded that Master Y threatened self-harm on multiple occasions.
12 March 2016	An Incident Report recorded that Master Y self-harmed.
29 March 2016	An Incident Report recorded that spontaneous use of force was required to prevent Master Y from self-harming.
15 October 2017	An Incident Report recorded that Master Y was allegedly assaulted by a group of men at a shopping centre. Police attended the scene and informed Master Y that the men may be charged. Master Y was advised to attend an appointment with a GP for a review of minor injuries, including a broken tooth. No further information was provided regarding this matter.

Other matters

The department advised that Mr X's wife and Master Y's stepmother, Ms Z, resides in Australia on a bridging visa.

Mr X and Ms Z's son, Master P, was born in Australia in February 2017. He has been in detention for less than two years and is not subject to reporting under s 486N. Ms Z has applied for a Temporary Protection visa (TPV) which lists Master P as a dependant. The processing of this application remains ongoing.

The department advised that the family resides together at a community placement address, with Ms Z and Master P residing as guests under temporary arrangements.

Information provided by Mr X

During an interview with Ombudsman staff on 7 September 2017 Mr X advised that he resides at a community placement address with his wife and two sons. Mr X stated that he has another son who lives with an aunt and he sees him regularly.

Mr X explained that he was transferred to Australia to undergo surgery on his hand after he sustained an injury at Nauru RPC. He said that his son, Master Y, was also transferred to Australia as he was suffering from mental health issues which he developed during his time in detention at Nauru RPC.

Mr X advised that he was currently receiving treatment for cancer and was regularly taking medication. He said that he felt very lucky to be transferred to Australia so that the cancer could be diagnosed. When asked about Master Y's health and welfare, Mr X explained that his son's mental health had deteriorated while he was at Nauru RPC. Mr X advised that Master Y was now going to school, to the gym and making some friends, and was getting a little better. Mr X said that his family had suffered a lot at Nauru RPC, but he is grateful that his family is now together and receiving the treatment they need. He also stated that they were slowly recovering from the psychological impact of their experiences in detention.

Mr X said that he and his family do not participate in community programs or activities, and do not do much on a day to day basis except attend medical appointments, go grocery shopping, or visit his other son. Mr X said that he and his family catch the train for transport, which is difficult with their baby son in the pram. He said that his family were also sometimes visited and assisted by community organisations.

Mr X said that he did not know anything about the future for his family. He explained that his wife had lodged an application for a TPV which listed his baby son as a dependant, and that his other son had lodged an application for a Safe Haven Enterprise visa. However he said that he and his son, Master Y, did not know anything at all about their immigration case. He had not spoken with his case manager in a long time.

Ombudsman assessment/recommendation

Mr X and his son were detained on 30 September 2013 after arriving in Australia by sea and have remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two years with no processing of their protection claims.

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

The Ombudsman notes with concern that Mr X and his son's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.

The Ombudsman notes IHMS's advice that Mr X has multiple serious medical conditions that require ongoing monitoring and treatment, including lymph gland cancer. IHMS has also advised that Master Y required ongoing treatment for interrelated mental and physical health concerns, including enuresis, chronic headaches, PTSD, separation anxiety, depression and a history of torture and trauma.

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

The Ombudsman notes with concern that it appears likely that Mr X and his son will remain in detention for a prolonged and uncertain period while they receive medical treatment. The Ombudsman further notes the government's duty of care to detainees and the serious risk to mental and physical health posed by a prolonged and uncertain period of detention.

The Ombudsman further notes that under current policy settings Mr X and his son are only eligible to have their protection claims assessed by the government of Nauru.

The Ombudsman recommends that the department make arrangements for the processing of Mr X and his son's protection claims.