

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 Ms X and her son, Mr Y, who have remained in immigration detention for more than 54 months (four and a half years).¹ The previous assessment 1003466 was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Family members	Ms X (and son)	Mr Y (son)
Citizenship	Country A	Country A
Year of birth	1972	1991
Total days in detention	1,458 (at date of department's report)	1,641 (at date of department's latest report)

Ombudsman ID	1001712-O
Date of department's reports	31 March 2017 and 2 October 2017

Recent detention history

Since the Ombudsman's previous assessment, Ms X continued to be placed in the community ² and Mr Y has remained at Facility B.	
21 July 2017	Ms X was granted a Safe Haven Enterprise visa (SHEV) and released from immigration detention.

Recent visa applications/case progression

22 December 2016	An Administration and Guardianship order was issued in respect of Mr Y which appointed Ms X as his guardian.
31 March 2017	The Department of Home Affairs (the department) advised that Ms X and Mr Y's SHEV application was placed on hold pending the resolution of Mr Y's criminal matters.
21 July 2017	Ms X was granted a SHEV.
2 October 2017	The department advised that Mr Y's SHEV application remained on hold pending the resolution of his criminal matters. The department further advised that Mr Y's placement at Facility B was considered appropriate at the time of his latest review.

Other legal matters

2 October 2017	The department advised that Mr Y was previously charged with indecently assaulting a minor and was scheduled to appear before a court in mid October 2017.
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¹ This is the third s 486O assessment on Ms X who has remained in immigration detention for a shorter period than her son as she was granted a visa and released from detention. For the purpose of reporting under s 486O, her timeline in detention has been aligned with her son's and they are reported on together.

² Ms X was granted a placement in the community under s 197AB and remained in immigration detention.

Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that Ms X did not receive treatment for any major physical or mental health issues.

Mr Y

IHMS advised that Mr Y continued to receive specialist support for an intellectual disability and developmental delay. In October 2016 Mr Y underwent a neuropsychological assessment and the psychologist reported that he had low intellectual ability and limited capacity to communicate and reason. Mr Y requires assistance with everyday activities and receives 24 hour support, including counselling for sexual offenders with intellectual disabilities.

Incidents Reports recorded that Mr Y allegedly displayed violent, abusive and aggressive behaviour on multiple occasions and IHMS advised that a positive behavioural support plan had been implemented. In July 2017 a forensic psychiatrist reported that Mr Y has reduced frustration tolerance and advised that his detention placement was likely to exacerbate his behavioural concerns as he lacks the family support and communication skills to manage the high stimulation detention environment. The forensic psychiatrist noted that Mr Y will have ongoing behavioural problems while he remains in a non-disability placement and recommended that he be placed in a family environment with disability support or a disability-specific environment. The forensic psychiatrist further advised that Mr Y's risk of engaging in sexually inappropriate behaviour remains escalated and would be reduced through appropriate supervision and management plans for his needs.

In May 2017 Mr Y commenced psychological counselling which focused on educating him about privacy. On 2 August 2017 a treating psychologist supported an alternative detention placement for Mr Y and suggested he be placed in a supervised disability care home. In August 2017 IHMS advised that it was working in collaboration with Australian Border Force (ABF) and disability support services to develop a case management approach to address Mr Y's needs.

IHMS further advised that Mr Y received treatment for shoulder inflammation and dental concerns.

18 December 2016	An Incident Report recorded that Mr Y threatened self-harm.
5 January 2017 – 24 April 2017	Incident Reports recorded that Mr Y self-harmed on five occasions.

Recent detention incidents

November 2016	An Incident Report recorded that Mr Y allegedly behaved inappropriately towards two Serco officers. The police investigated the incident and declined to take the matter further.
July 2017	Incident Reports advised that Mr Y allegedly behaved inappropriately towards a Serco officer and his carer. The department advised that the police investigated the incidents and determined that, in light of Mr Y's intellectual disability, it would not be in the public interest to pursue prosecution.

Other matters

Mr Y's uncle, Mr Z, resides in the community on a bridging visa.

Ombudsman assessment/recommendation

Ms X and Mr Y were detained on 3 April 2014 after arriving in Australia by sea.

Ms X remained in immigration detention, both in a detention facility and the community, for more than four years. She was granted a SHEV on 21 July 2017 and released from immigration detention.

Mr Y has remained in immigration detention, both in a detention facility and the community, for more than four and a half years. On 2 October 2017 the department advised that Mr Y's SHEV application remains on hold pending the resolution of his criminal matters.

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 Mr Y has an intellectual disability and developmental delay and requires assistance with everyday activities. In December 2016 Ms X was appointed as Mr Y's guardian under an Administration and Guardianship order.

The Ombudsman notes with concern that Mr Y allegedly displayed violent, abusive and aggressive behaviour on multiple occasions and behaved inappropriately towards others on three occasions during this assessment period. In July 2017 a forensic psychiatrist reported that Mr Y's detention placement was likely to exacerbate his behavioural concerns and noted that he will continue to have behavioural problems while he remains in a non-disability placement. The forensic psychiatrist recommended that Mr Y be placed in a family environment with disability support or a disability-specific environment. In August 2017 a treating psychologist supported an alternative detention placement for Mr Y and suggested he be placed in a supervised disability care home.

In August 2017 IHMS advised that it was working in collaboration with ABF and disability support services to develop a case management approach to address Mr Y's needs. However, on 2 October 2017 the department advised that Mr Y's placement at Facility B was considered appropriate at the time of his latest review.

In light of the advice of Mr Y's treating forensic psychiatrist and psychologist, the Ombudsman recommends that the department consider placing Mr Y in alternative disability-specific accommodation equipped to manage his needs and behavioural concerns.