

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, Ms Y and their sons who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years).

The first assessment 1002226-O was tabled in Parliament on 14 September 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1978
Total days in detention	1,276 (at date of DIBP's latest review)

Family details

Family members	Ms Y (wife)	Master Z (son)	Master P (son)
Citizenship	Country A	Country A	Country A, born in Australia
Year of birth	1988	2012	2015
Total days in detention	1,276 (at date of DIBP's latest review)	1,276 (at date of DIBP's latest review)	827 (at date of DIBP's latest review)

Ombudsman ID	1002226-O1
Date of DIBP's reviews	11 November 2016, 6 February 2017 ¹ and 12 May 2017

Recent detention history

Since the Ombudsman's previous assessment (1002226-O), the family has remained in community detention.
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Recent visa applications/case progression

The Department of Immigration and Border Protection (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 a Regional Processing Centre (RPC) on completion of their treatment.	
3 May 2017	The department advised that Mr X was a plaintiff in proceedings in the High Court (HC) related to the constitutional validity of regional processing arrangements. On 3 May 2017 the HC found that the arrangements were constitutional. ²

¹ Master P was previously subject to an individual 24-month review under s 486N. He is now included in his family's review.

² *Plaintiff M96A/2016 & Anor v Commonwealth of Australia & Anor* [2017] HCA 16.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for a chronic ear condition with recurrent infections. He was referred to an ear, nose and throat specialist for review and his condition continued to be monitored by a general practitioner (GP).

IHMS further advised that Mr X did not require treatment for any major mental health issues during this assessment period.

Ms Y

IHMS advised that Ms Y attended psychological counselling for the management of multiple mental health concerns, including major depression, anxiety and insomnia. On 24 August 2016 a GP advised that Ms Y and her family require services to manage their complex mental and physical health concerns and were experiencing issues accessing these services due to long commutes from their community detention address. The GP recommended that they be relocated to a community detention address closer to these services. On 11 November 2016 the department advised that it was considering the GP's recommendation and on 12 May 2017 the department reported that no further concerns had been raised in the family's latest IHMS report.

IHMS further advised that Ms Y received treatment for chronic reflux and epigastric pain, and was awaiting an endoscopy at the time of IHMS's latest report.

Master Z

IHMS advised that Master Z was previously diagnosed with autistic spectrum disorder and attended therapy for ongoing developmental and speech issues. His condition continued to be monitored by a GP and he was referred for specialist review as required.

Master P

IHMS advised that Master P did not require treatment for any major physical or mental health issues during his assessment period.

Other matters

27 April 2017	The family's complaint with the Australian Human Rights Commission was finalised.
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Ombudsman assessment/recommendation

Mr X, Ms Y and Master Z were detained on 23 July 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than three and a half years with no processing of their protection claims. Master P was detained on 5 February 2015 and has been held in detention for more than two years with no processing of his protection claims.

Mr X, Ms Y and Master Z were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 19 July 2013 the family remains liable for transfer back 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. The Ombudsman further notes advice from IHMS that the family requires access to services for the management of multiple mental and physical health issues. The Ombudsman notes with serious concern that a GP recommended that the family be relocated to a community detention address closer to these services. In light of these concerns, the Ombudsman recommends that consideration be given to varying the family's community detention placement to enable them to reside closer to health services.

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 the family's claims it appears likely they will remain in detention indefinitely.

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