

## ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Miss X who has remained in immigration detention for a period of more than 24 months (two years).

<b>Name</b>	Miss X
<b>Citizenship</b>	Country A, (born to parents <sup>1</sup> in immigration detention)
<b>Year of birth</b>	2014
<b>Ombudsman ID</b>	1002563-O
<b>Date of DIBP's review</b>	4 January 2017
<b>Total days in detention</b>	730 (at date of DIBP's review)

### Detention history

5 January 2015	Following her birth to parents in immigration detention, Miss X was detained under s 189(1) of the <i>Migration Act 1958</i> at Wickham Point Alternative Place of Detention.
31 March 2016	Miss X and her parents were transferred to community detention.

### Visa applications/case progression

<p>The Department of Immigration and Border Protection (the department) advised that as Miss X's parents arrived in Australia by sea after 19 July 2013 and were transferred to a Regional Processing Centre (RPC), Miss X and her parents are barred under ss 46A and 46B from lodging a valid protection visa application.</p> <p>Miss X's parents were returned to Australia for medical treatment on 2 August 2014.</p> <p>The department has advised that under current policy settings Miss X is not eligible to have her protection claims assessed in Australia and remains liable for transfer to an RPC on completion of her parents' treatment.</p>	
15 February 2016	Miss X's parents applied to the High Court requesting special leave to seek an injunction preventing their removal. The matter remained ongoing.
18 March 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

---

<sup>1</sup> Miss X's parents, Mr Y and Ms Z, are the subjects of Ombudsman assessment 1002384-O.

## Health and welfare

<p>International Health and Medical Services (IHMS) advised that Miss X received specialist treatment for reflux, food aversion, and growth and development concerns. In February 2016 a paediatrician advised that her eating issues may be due to oral aversion and behavioural issues. At the time of IHMS's report, Miss X was awaiting a paediatric review and her condition continued to be monitored by a general practitioner.</p>	
<p>3 February 2016</p>	<p>Incident Reports recorded that Miss X's parents threatened to harm themselves and their child if they were returned to an RPC. Her parents were placed on Supportive Monitoring and Engagement (SME) observations by the IHMS mental health team and the incident was referred to the authorities. Her parents were removed from SME observations on 25 February 2016 and the authorities advised that no further action was required.</p>

## Other matters

<p>Miss X's uncle, Mr P, is currently located at Nauru RPC.</p>
---

## Ombudsman assessment/recommendation

<p>Miss X was detained on 5 January 2015 following her birth to parents in immigration detention and she has been held in detention for more than two years with no processing of her protection claims.</p> <p>Miss X's parents were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Miss X's parents arrived after 19 July 2013 the family remains liable for transfer back to an RPC on completion of their treatment.</p> <p>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.</p> <p>The Ombudsman notes that under current policy settings Miss X is not eligible to have her protection claims assessed in Australia and that without an assessment of Miss X's claims it appears likely she will remain in detention indefinitely.</p> <p>The Ombudsman recommends that priority is given to resolving Miss X and her parents' immigration status.</p>
--