

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 Miss X who has remained in immigration detention for a cumulative period of more than 24 months (two years).

Name	Miss X
Citizenship	Country A, (born to parents ¹ in immigration detention)
Year of birth	2015
Ombudsman ID	1002648-O
Date of DIBP's review	19 April 2017
Total days in detention	730 (at date of DIBP's review)

Detention history

20 April 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 Immigration Detention Centre.
11 July 2015	Miss X and her family were transferred to Melbourne Immigration Transit Accommodation.
15 December 2015	The family was transferred to community detention.

Visa applications/case progression

<p>The Department of Immigration and Border Protection (the department) advised that as Miss X's family arrived in Australia by sea after 19 July 2013 and was transferred to a Regional Processing Centre (RPC), Miss X and her family are barred under ss 46A and 46B from lodging a valid protection visa application.</p> <p>Miss X's family was returned to Australia for medical treatment on 17 May 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 the family's treatment.</p>	
1 December 2015	The Minister intervened under s 197AB to allow the family to reside in community detention.

¹ Miss X's parents, Mr Y and Ms Z, and her sister, Miss P, are the subject of Ombudsman assessment 1002205-O1.

Health and welfare

International Health and Medical Services (IHMS) advised that Miss X was diagnosed with multiple physical health concerns, including breathing problems, an inherited blood disorder, developmental delays, feeding issues and a muscular abnormality. Miss X was reviewed by a neonatologist and an ear, nose and throat (ENT) specialist and on 12 July 2015 she underwent surgery to repair her airway. Following her surgery it was reported that Miss X had recovered well and her condition continued to be managed by an ENT specialist and a speech pathologist.

IHMS further advised that Miss X received specialist treatment for the management of complex mental health concerns, including profound infant depression, an emotional regulation disorder, and episodes of distress and frustration. In July 2015 the mental health team raised concerns regarding her physical and neurodevelopment and a psychiatrist strongly recommended that Miss X and her family be transferred to community detention.

Following her transfer to community detention, some improvements in Miss X’s mental health were noted. In January 2017 she attended a specialist clinic for management of a sleep regulation disorder. Her condition continued to be managed by a multidisciplinary team, including a neurologist, psychiatrist, physiotherapist, and an occupational therapist.

12 July 2015

Miss X underwent surgery to repair her airway.

Ombudsman assessment/recommendation

Miss X was detained on 20 April 2015 following her birth to parents in immigration detention and has been held in detention for a cumulative period of more than two years with no processing of her protection claims.

Miss X’s family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because Miss X’s family arrived after 19 July 2013, Miss X and her family remain 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 Miss X has complex medical conditions that require ongoing specialist treatment.

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.

The Ombudsman recommends that priority is given to resolving Miss X’s immigration status.