

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 Ms X¹ who has remained in immigration detention for a cumulative period of more than 36 months (three years).

The first assessment 1002411-O was tabled in Parliament on 23 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X
Citizenship	Country A
Year of birth	1981
Ombudsman ID	1002411-O1
Date of DIBP's reviews	21 November 2016, 20 May 2017 and 14 July 2017 ²
Total days in detention	1,149 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002411-O), Ms X has remained in community detention.

Recent visa applications/case progression

The Department of Immigration and Border Protection (the department) has advised that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to a Regional Processing Centre (RPC) on completion of her treatment.

¹ Ms X's husband, Mr Y, and their daughter, Miss Z, are the subjects of Ombudsman assessments 1002449-O1 and 1002633-O respectively. Their son, Master P, was born in Australia in May 2016 and detained on 16 June 2016. He has been in detention for less than two years and is not subject to review under s 486N.

² The department provided an additional review to combine Ms X, Mr Y and Miss Z's cases and advised that the family will be reported on together in future.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X received specialist treatment for complex mental health concerns, including a borderline personality disorder, generalised panic disorder, post-natal depression, and post-traumatic stress disorder related to traumatic periods at Nauru RPC and in her home country. She disclosed a history of torture and trauma and attended counselling after presenting with symptoms of low mood, low self-esteem and anxiety. Ms X reported that she was feeling overwhelmed and not coping with raising her children while also dealing with her mental health concerns. In December 2016 the family attended a residential program at an early parenting services centre for mental health and parenting support. She was prescribed with antidepressant medication and continued to attend psychological counselling.</p> <p>IHMS further advised that Ms X received treatment for multiple physical health concerns, including migraines, reflux issues and a back fracture following a fall. In January 2017 a general practitioner (GP) recommended assistance from a carer or nanny for Ms X and her family due to recent physical injuries that she had sustained and the impact on her capacity to support her children. She was reviewed by a GP on 17 March 2017 who reported that Ms X and her husband found it difficult, both physically and psychologically, to care for their children. The request for formal assistance was being assessed and Ms X was awaiting a physiotherapy review at the time of IHMS's latest report.</p>	
10 January 2017	Ms X attended hospital for treatment of a back fracture following a fall.

Other matters

21 November 2016	The department advised that Ms X's complaint with the Australian Human Rights Commission remained ongoing.
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Ombudsman assessment/recommendation

<p>Ms X was detained on 27 August 2013 after arriving in Australia by sea and has been held in detention for a cumulative period of more than three years with no processing of her protection claims.</p> <p>Ms X was transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.</p> <p>The Ombudsman's previous assessment (1002411-O) recommended that priority be given to resolving Ms X's immigration status.</p> <p>On 23 November 2016 the Minister advised that under current legislation and policy settings, Ms X remains subject to return to an RPC on completion of her 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. The Ombudsman notes with serious concern advice from IHMS that both Ms X and her husband suffer from mental health issues and were experiencing physical and psychological difficulty caring for their young children. The Ombudsman further notes that a GP recommended that Ms X and her family receive formal assistance from a carer or nanny. The Ombudsman recommends that the department explore options for enabling Ms X and her family to receive the assistance of a carer or nanny.</p> <p>The Ombudsman notes that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and that without an assessment of Ms X's claims it appears likely she will remain in detention indefinitely.</p> <p>The Ombudsman again recommends that priority is given to resolving Ms X's immigration status.</p>
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