

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 Mr X and Ms Y who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1982

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1990

Ombudsman ID	1002453-O
Date of DIBP's reviews	18 July 2016 and 16 January 2017
Total days in detention	914 (at date of DIBP's latest review)

Detention history

11 November 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention, Christmas Island.
14 November 2013	Transferred to Christmas Island Immigration Detention Centre.
15 November 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
21 July 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Facility B.
2 January 2015	Transferred to Facility C.
26 February 2015	Transferred to Facility B.
19 April 2015	Transferred to Facility D.
29 March 2016	Transferred to community detention.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

Visa applications/case progression

<p>Mr X and Ms Y arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that Mr X and Ms Y are barred under ss 46A and 46B from lodging a valid protection visa application as a result of their method of arrival and transfer to an RPC.</p> <p>Mr X and Ms Y were returned to Australia for medical treatment on 21 July 2014.</p> <p>The department has advised that under current policy settings Mr X and Ms Y are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.</p>	
18 March 2016	The Minister intervened under s 197AB to allow Mr X and Ms Y to reside in community detention.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X was diagnosed with an adjustment disorder, anxiety, depression and post-traumatic stress disorder (PTSD) and prescribed with medication. Mr X presented with frustration and exhaustion related to providing care for his young child and his wife's complex mental health concerns. In June 2015 he was placed on high Supportive Monitoring and Engagement (SME) observations following ongoing mental health concerns and was closely monitored by the mental health team in November 2015 after disclosing suicidal thoughts. He declined to attend counselling and is being monitored by a general practitioner (GP) and community service provider.</p> <p>IHMS further advised that Mr X was referred to an optometrist and was prescribed with medication. He attended an x-ray following lower back pain and was referred to a specialist for management of a thyroid condition.</p>

Ms Y

<p>IHMS advised that Ms Y was diagnosed with PTSD, psychosis, anxiety, depression and an adjustment disorder. She was reviewed by a psychiatrist and prescribed with medication. Ms Y reported episodes of auditory hallucinations and thoughts of self-harm and IHMS reported that she made a number of serious suicide attempts. Ms Y was placed on SME observations and required ongoing psychiatric care and counselling.</p> <p>Ms Y was admitted to a psychiatric unit for specialist treatment following the birth of both children. The family were provided community services support and continued to be closely monitored and provided with psychological treatment.</p> <p>IHMS advised that Ms Y was referred to a cardiology clinic for monitoring of a heart condition.</p>	
January 2015	Ms Y gave birth to her son ² without complication.
5 June 2015 – 7 July 2015	Incident Reports recorded that Ms Y self-harmed on six occasions.
29 June 2015	An Incident Report recorded that Ms Y was admitted to hospital for a mental health assessment following an incident of self-harm.
30 June 2015	An Incident Report recorded that Ms Y self-harmed while admitted for treatment.

² Master Z was born in Australia in January 2015 and is the subject of Ombudsman assessment 1002589.

April 2016	Ms Y gave birth to her son ³ without complication.
------------	---

Detention incidents

22 August 2014 – 21 April 2016	Incident Reports recorded that Mr X allegedly displayed aggressive and abusive behaviour towards detention centre staff on multiple occasions.
5 August 2015	An Incident Report recorded that welfare authorities were notified after Mr X and Ms Y refused to admit their child to hospital for paediatric care.
10 August 2015	An Incident Report recorded that Ms Y allegedly inappropriately touched a detention centre staff member. The incident was referred to the police for investigation.
24 August 2015 – 28 April 2016	Incident Reports recorded that Ms Y reported she was sexually assaulted whilst detained at Nauru RPC. The matter was referred to the Australian Federal Police for investigation.
8 September 2015 – 2 June 2016	Incident Reports recorded that Ms Y allegedly displayed aggressive and abusive behaviour towards detention centre staff on multiple occasions.
18 June 2016	An Incident Report recorded that Mr X was allegedly physically abusive towards his child.

Other matters

12 June 2015	The Australian Human Rights Commission (AHRC) notified the department of a complaint lodged by Ms Y. The department provided a response on 17 August 2015 and on 18 May 2016 the AHRC finalised its investigation.
--------------	--

³ Master P was born in Australia in April 2016 and detained on 26 May 2016. He has been in detention for less than two years and is not subject to review under s 486N.

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 11 November 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years with no processing of their protection claims.

Mr X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 13 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that Mr X and Ms Y have medical conditions which require ongoing 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 with concern that both Mr X and Ms Y receive treatment for significant mental health conditions and the family requires ongoing support and monitoring by community service providers.

The Ombudsman notes that under current policy settings Mr X and his family are not eligible to have their protection claims assessed in Australia and that without an assessment of their claims it appears likely they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving Mr X and his family's immigration status.