

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

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| <b>Name</b>          | Ms X (and daughter) |
| <b>Citizenship</b>   | Country A           |
| <b>Year of birth</b> | 1978                |

### Family details

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|-----------------------|-------------------|
| <b>Family members</b> | Miss Y (daughter) |
| <b>Citizenship</b>    | Country A         |
| <b>Year of birth</b>  | 2009              |

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| <b>Ombudsman ID</b>            | 1002484-O                             |
| <b>Date of DIBP's reviews</b>  | 30 August 2016 and 27 February 2017   |
| <b>Total days in detention</b> | 913 (at date of DIBP's latest review) |

### Detention history

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| 26 July 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 (APOD), Christmas Island. |
| 7 February 2014  | Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>   |
| 13 March 2015  | Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.  |
| 17 March 2015  | Transferred to Facility B.  |
| 10 December 2015   | Transferred to community detention.   |
| The Department of Immigration and Border Protection (the department) advised that Ms X and Miss Y currently reside with Ms X's husband and Miss Y's father, Mr Z. Mr Z arrived in Australia on 16 August 2012 and was granted a Temporary Protection visa (TPV) on 1 April 2015. |   |

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<sup>1</sup> 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

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| <p>Ms X and Miss Y arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The department has advised that Ms X and Miss 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>Ms X and Miss Y were returned to Australia for medical treatment on 13 March 2015.</p> <p>The department has advised that under current policy settings Ms X and Miss 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> |  |
| March 2014  | The department notified Ms X and Miss Y of the unintentional release of personal information. <sup>2</sup>   |
| 23 March 2015   | Ms X lodged a TPV application with Miss Y listed as a dependant. On 27 March 2015 the TPV application was deemed invalid as Ms X and Miss Y were subject to the bar under s 46A. |
| 5 June 2015   | Ms X requested Ministerial Intervention under ss 46A, 46B and 198AE. On 12 August 2015 Ms X's requests were finalised without referral to the Minister.                          |
| 23 November 2015  | Ms X's representative requested ministerial intervention under ss 46A, 197AB, 197AD and 198AE.   |
| 3 December 2015   | The Minister intervened under s 197AB to allow Ms X and Miss Y to reside in community detention.   |
| 5 April 2016  | The Minister intervened under s 197AB and varied Ms X and Miss Y's community detention address to enable them to reside with Mr Z.   |
| 23 December 2016  | Ms X's representative requested ministerial intervention under ss 46A, 46B and 198AE. The department advised that it is currently preparing its response to this request.        |

## Health and welfare

### Ms X

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| <p>International Health and Medical Services (IHMS) advised that Ms X received treatment for multiple complex mental health concerns, including post-traumatic stress disorder and depression related to her separation from her husband. In June 2015 Ms X was prescribed with antidepressant medication after presenting with situational stress and detention fatigue. She was placed on Supportive Monitoring and Engagement observations in July and December 2015 and presented to hospital for a psychiatric assessment in September 2015 following a deterioration in her mental health.</p> <p>In July 2016 Ms X attended a psychological assessment and was diagnosed with severe depression and anxiety with suicidal ideation. Her condition continued to be managed through intensive counselling and she is monitored by a general practitioner.</p> <p>IHMS further advised that Ms X received treatment for multiple physical health issues, including chronic wrist, shoulder and neck pain and gynaecological concerns.</p> |
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<sup>2</sup> In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

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| 8 July 2015 –<br>27 November 2015 | Incident Reports recorded that Ms X threatened self-harm on two occasions. |
| 11 September 2015                 | An Incident Report recorded that Ms X self-harmed.                         |

### *Miss Y*

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| <p>IHMS advised that Miss Y received treatment for multiple complex mental health concerns, including anxiety related to her separation from her father and stress associated with her mother’s mental health concerns. In May 2015 a paediatrician reported that Miss Y is experiencing ongoing harm in immigration detention after Ms X disclosed that Miss Y had witnessed traumatic events at Nauru RPC and experienced associated nightmares and personality changes. A psychiatrist raised concerns about child welfare related to Ms X’s decreased parental coping skills.</p> <p>Following her transfer to community detention, a treating psychologist reported that Miss Y’s mental health had improved, but she remains vulnerable to regression and mood changes. The psychologist advised that ongoing counselling and stability were necessary for sustained improvement. In July 2016 a paediatrician advised that Miss Y was aware of her mother’s stress and required ongoing support from her parents. IHMS advised that she continued to attend counselling, family counselling and consultations with teachers for management of her mental health.</p> <p>The department advised that Ms X and Miss Y’s case was referred to the authorities in State C for monitoring after Miss Y allegedly witnessed incidents of self-harm at Nauru RPC.</p> <p>IHMS further advised that Miss Y received treatment for recurrent tonsillitis and nasal abnormalities. She was scheduled to undergo a surgical procedure on 25 January 2017 and was awaiting an ear, nose and throat review at the time of IHMS’s report.</p> |
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### **Other matters**

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| 29 June 2015                        | The department was notified that Ms X had lodged a complaint with the Office of the Commonwealth Ombudsman in relation to her separation from her husband and the conduct of an Australian Border Force officer. Following an investigation, the complaint was finalised on 3 September 2015. |
| September 2015 and<br>November 2015 | The State C authorities and police were notified of alleged incidents of inappropriate behaviour towards Miss Y by two male detainees at Facility B. The police advised that no criminal offences had been committed and no further action was required.                                      |
| 27 February 2017                    | The department advised that Ms X is a plaintiff in ongoing court proceedings. No further information was provided.  |

### **Ombudsman assessment/recommendation**

Ms X and Miss Y were detained on 26 July 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.

Ms X and Miss Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and Miss Y arrived after 19 July 2013 they 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 notes with serious concern the negative impact of Ms X's uncertain immigration status on her mental health and the associated stress placed on Miss Y. The Ombudsman further notes advice from IHMS that Miss Y requires a stable environment for sustained improvements in her mental health.

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

The Ombudsman recommends that priority is given to resolving Ms X and Miss Y's immigration status.