

## 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 Mr X and Ms Y who have remained in immigration detention for a cumulative period of more than 36 months (three years).

The first assessment 1002416-O was tabled in Parliament on 23 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

<b>Name</b>	Mr X (and wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1979

### Family details

<b>Family members</b>	Ms Y (wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1981

<b>Ombudsman ID</b>	1002416-O1
<b>Date of DIBP's reviews</b>	24 November 2016 and 25 May 2017
<b>Total days in detention</b>	1,094 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1002416-O), Mr X, Ms Y and their son<sup>1</sup> have 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 Mr X and Ms Y are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
23 January 2017	The Minister intervened under s 197AD of the <i>Migration Act 1958</i> to vary Mr X and Ms Y's community detention address from Geelong to Sunshine North. The department advised that the family was not relocated to the Sunshine North property on this date.
24 April 2017	The family was relocated to a temporary community detention address after the Geelong property flooded due to severe weather conditions.
28 April 2017	The family was relocated to the Sunshine North property.

<sup>1</sup> Master Z was born in Australia in September 2015 and detained on 10 September 2015. He has been in detention for less than two years and is not subject to review under s 486N.

## Health and welfare

### Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for leukaemia prior to his arrival in Australia. On 4 April 2016 and 6 May 2016 a specialist advised that he was in remission and his condition was stable. In January 2017 Mr X presented with ongoing nasal concerns and was referred to an ear, nose and throat specialist.

IHMS advised that Mr X did not require treatment for any major mental health issues during this assessment period.

### Ms Y

IHMS advised that Ms Y attended counselling and was prescribed with medication for the management of complex mental health concerns, including depression, anxiety, and a history of torture and trauma. On 13 February 2017 a treating psychiatrist reported that Ms Y was in a fragile state and her distress was related to her change in community detention address from Geelong to Sunshine North. The psychiatrist advised that Ms Y's mental health would significantly improve if she was relocated to a community detention address in Dandenong as she would be closer to her support network. On 9 March 2017 Ms Y was diagnosed with chronic post-traumatic stress disorder after threatening self-harm in relation to her relocation to the Sunshine North property. She declined to be admitted to a psychiatric clinic for treatment and continued to be regularly monitored by a general practitioner and psychiatrist.

14 February 2017 –  
24 April 2017

Incident Reports recorded that Ms Y threatened self-harm on multiple occasions.

### Other matters

8 October 2015 and  
4 November 2015

The department provided a response to the Australian Human Rights Commission in relation to Ms Y's complaint. The matter was finalised on 29 July 2016.

### **Ombudsman assessment/recommendation**

Mr X and Ms Y were detained on 19 August 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than three 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 Mr X and Ms Y arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman's previous assessment (1002416-O) recommended that priority be given to exploring options to enable the resolution of Mr X and Ms Y's immigration status.

On 23 November 2016 the Minister noted the recommendation and advised that under current policy settings Mr X and Ms Y remain subject to return 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 advice from a psychiatrist that Ms Y was distressed and threatened self-harm in relation to her relocation to a community detention address in Sunshine North. The Ombudsman further notes the psychiatrist's advice that her mental health would improve if she was transferred to a community detention address in Dandenong closer to her support network. In light of these concerns, the Ombudsman recommends that consideration be given to varying the family's community detention placement to an address in Dandenong.

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

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