

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the first s 486O report on Ms 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	Ms X (and daughter)
Citizenship	Country A
Year of birth	1959

Family details

Family members	Ms Y (daughter)
Citizenship	Country A
Year of birth	1981

Ombudsman ID	1002505-O
Date of DIBP's reports	18 September 2016 and 18 March 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

20 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea with Ms X's husband and Ms Y's father, Mr Z, who is the subject of Ombudsman report 1002404-O. They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
18 September 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
3 September 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Brisbane Immigration Transit Accommodation (ITA).
12 March 2015	Transferred to Wickham Point APOD.
13 March 2015	Transferred to Nauru RPC.
27 May 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Facility B.
2 July 2015	Transferred to Facility C.
16 September 2016	Transferred to community detention where they reside with Mr Z.

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

Visa applications/case progression

<p>Ms 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 Ms 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>Ms X and Ms Y were returned to Australia for medical treatment on 3 September 2014 and 27 May 2015.</p> <p>The department has advised that under current policy settings Ms 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>	
7 September 2016	The Minister intervened under s 197AB to allow Ms X and Ms Y to reside in community detention.

Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X received psychological and psychiatric treatment for symptoms of depression, post-traumatic stress disorder (PTSD) and distress related to situational issues. In July 2014 Ms X's mental health deteriorated significantly after her husband was returned to Australia for medical treatment and in August 2014 she was placed on Supportive Monitoring and Engagement (SME) observations following an incident of self-harm. Incident reports also recorded instances of threatened self-harm.</p> <p>On 9 May 2016 a specialist counselling service advised that Ms X's psychological functioning was likely to deteriorate if she remained in restricted detention and on 27 May 2016 a psychiatrist reported that she continued to experience stress and sleep issues related to her ongoing detention. On 5 February 2017 an IHMS Medical Director advised that it was clinically inappropriate for Ms X to be placed in an RPC due to the high risk of her mental health deteriorating if she were separated from her daughter, who requires treatment for complex mental health concerns in Australia.</p>
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Ms Y

<p>IHMS advised that Ms Y received treatment for multiple complex mental health concerns, including major depressive disorders with psychotic features, conversion disorder, PTSD and a history of torture and trauma. On 12 March 2015 Ms Y was placed on SME observations following a deterioration in her mental health. She subsequently self-harmed and refused food and fluid as a form of protest and declined mental health treatment. Incident reports also recorded instances of threatened self-harm. Following a psychiatric assessment, she was admitted to a psychiatric clinic for treatment on 2 July 2015 and improvements were reported.</p> <p>On 7 September 2015 Ms Y was admitted to hospital for physical and psychological treatment for conversion disorder and associated lower limb weakness. IHMS advised that Ms Y requires a walking frame and wheelchair for mobility and assistance with daily living tasks. A treating psychiatrist reported that she experiences extreme distress and suicidal ideation related to situational stressors, including her uncertain immigration status, and this manifests in physical symptoms. In October 2016 she was transferred to a hospital rehabilitation clinic for physiotherapy and occupational therapy.</p> <p>Following her discharge into community detention, Ms Y attended intensive psychiatric counselling and was monitored by a hospital psychiatric unit, neurorehabilitation team and a general practitioner.</p> <p>IHMS further advised that Ms Y received treatment for multiple physical health concerns, including migraines, gastroenterological issues and recurring infections.</p>
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2 July 2015 – 4 September 2015	Admitted to a psychiatric clinic.
7 September 2015 – October 2016	Admitted to hospital for psychiatric and physical treatment.
October 2016 – 1 November 2016	Admitted to a hospital rehabilitation clinic.

Other matters

8 July 2015	An advocate lodged a complaint with the Ombudsman’s office on behalf of Ms X, Ms Y and Mr Z in relation to a freedom of information request. The department provided a response on 16 July 2015 and the complaint was finalised on 20 July 2015.
Ms Z and Mr Z have two other children, Mr P and Miss Q, who also arrived in Australia by sea and reside in the community on Bridging visas.	

Ombudsman assessment/recommendation

<p>Ms X and Ms Y were detained on 20 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.</p> <p>Ms X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.</p> <p>The Ombudsman notes the advice from IHMS that Ms X and Ms Y have medical conditions that require ongoing 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 concern Ms X’s and Ms Y’s complex mental health conditions, particularly Ms Y’s extensive hospital admissions for psychiatric treatment. The Ombudsman further notes with serious concern the reported adverse impact of their uncertain immigration status on their mental health.</p> <p>The Ombudsman notes that under current policy settings Ms X and Ms Y 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.</p> <p>The Ombudsman recommends that priority is given to resolving Ms X and Ms Y’s immigration status.</p>
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