

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment 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	1946

Family details

Family members	Ms Y (daughter)
Citizenship	Country A
Year of birth	1983

Ombudsman ID	1002478-O
Date of DIBP's reviews	25 August 2016 and 23 February 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

20 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. Ms X arrived in Australia with her two children, Ms Y and Mr Z. ¹ The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
8 January 2014	Ms X and Ms Y were transferred to Nauru Regional Processing Centre (RPC) ² where they were subsequently reunited with Mr Z.
14 February 2015	The family was returned to Australia and re-detained under s 189(1). They were transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
24 March 2016	Transferred to community detention.

¹ Mr Z is the subject of Ombudsman assessment 1002587-O. He was separated from his mother and sister when he was transferred to Manus Island RPC on 5 August 2013 and the family was reunited at Nauru RPC on 10 January 2014. They now reside in community detention in Australia together.

² 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>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 the family is 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 14 February 2015.</p> <p>The department has advised that under current policy settings the family is 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>	
17 March 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X disclosed a history of torture and trauma and attended specialist counselling. She was diagnosed with depressive neurosis and regularly engaged with the mental health team. In October 2015 she was placed on Supportive Monitoring and Engagement following ongoing suicidal ideation, relating to her placement in held detention, and an incident of self-harm.</p> <p>In August 2016, Ms X was treated in hospital for anxiety and stress related chest pain and ongoing suicidal ideation relating to fears of returning to restricted detention and being separated from her children. She was referred to a psychiatrist who prescribed her with medication for generalised anxiety and persistent depressive disorder, which were noted to have been exacerbated by her prolonged detention and uncertainty about her family's future.</p> <p>Ms X continued to receive specialist counselling and was closely monitored by a general practitioner (GP) for her depressive state. In September 2016 her psychologist reported that a return to restricted or offshore detention would cause a serious deterioration in Ms X's mental health.</p> <p>IHMS further advised that Ms X was referred for specialist review following non-cardiac related chest pains, benign breast lumps and growths on her hand and face. She received treatment for cataracts and dental concerns and was prescribed with medication for high cholesterol and ongoing joint pain.</p>	
8 August 2013 – 4 January 2016	Incident Reports recorded that Ms X threatened self-harm on three occasions.
16 October 2015 and 8 March 2016	Incident Reports recorded that Ms X self-harmed.

Ms Y

<p>IHMS advised that Ms Y was referred for psychiatric review and diagnosed with generalised anxiety and pervasive depressive disorder. In September 2014 she was reviewed following an incident of self-harm and a psychiatrist recommended she commence antidepressant medication, which she declined. In September 2016 she presented with significant weight loss, deteriorated psychosocial functioning, low mood and anxiety and her treating psychologist reported that returning to held or offshore detention would result in serious deterioration of her mental health. She continued to be monitored by a GP and attended specialist counselling.</p> <p>IHMS further advised that Ms Y received treatment for an iron deficiency and was prescribed medication for a thyroid condition.</p>	
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Ombudsman assessment/recommendation

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.

The family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 19 July 2013 the family remains liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that both Ms X and Ms Y require ongoing monitoring for both physical and mental health concerns and that their psychologist has reported that being returned to held or offshore detention would cause significant deterioration in their mental health.

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 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.

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