

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

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1983

Family details

Family members	Ms Y (wife)	Miss X (daughter)
Citizenship	Country A	Country A
Year of birth	1985	2009

Ombudsman ID	1002496-O
Date of DIBP's reviews	4 September 2016 and 6 March 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

9 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to Christmas Island Immigration Detention Centre (IDC).
14 October 2013	Transferred to Northern IDC and then to Nauru Regional Processing Centre (RPC). ¹
11 October 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point Alternative Place of Detention (APOD).
6 January 2015	Transferred to Bladin Point APOD.
26 February 2015	Transferred to Wickham Point APOD.
27 May 2015	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

Mr X, Ms Y and their daughter 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.

The family was returned to Australia for medical treatment on 11 October 2014.

The department has advised that under current policy settings the family is not eligible to have their protection claims assessed in Australia and remains liable for transfer back to an RPC on completion of their treatment.

18 May 2015	The Minister intervened under s 197AB to allow the family to reside in community detention.
20 May 2015	Mr X, on behalf of his daughter, initiated proceedings in the Northern Territory Supreme Court (NTSC) seeking an injunction restraining the Minister from returning his daughter to an RPC. On 17 September 2015 the NTSC found it did not have jurisdiction to grant an injunction.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X has a history of symptoms of anxiety and depression requiring psychological counselling. In February 2016 he informed his general practitioner (GP) that he was feeling depressed and anxious. He was counselled by the GP and commenced on herbal medication to assist with his mood. IHMS advised in its most recent report that Mr X had not presented with any further concerns in relation to this issue.

IHMS further advised that Mr X was treated for multiple physical health concerns including tension headaches and gastric reflex. He was awaiting specialist review for carpal tunnel syndrome and chronic back pain and sciatica with disc protrusion.

Ms Y

IHMS advised that Ms Y had a history of torture and trauma and attended multiple consultations with a specialist counselling service due to persistent suicidal thoughts with expressed feelings of hopelessness and ongoing sleep disturbance. Ms Y was also noted as having major depressive disorder with a previous history of self-harm. On 29 April 2016 Ms Y's specialist counsellor noted that she presented with feelings of hopelessness and panic and on 3 November 2016 she was referred to the mental health team at a hospital due to continuing symptoms of depression and difficulty with sleeping. At the date of IHMS's latest report she continued to take prescribed medication for mental health concerns and was awaiting psychiatric follow up.

IHMS further advised that Ms Y received treatment for physical health issues including gynaecological and gastrointestinal matters and injuries from a motor vehicle accident. At the date of IHMS's latest report an appointment with a specialist was pending for review of the gastrointestinal matter.

March 2016	Gave birth to her son ² without complication.
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² Master Z was born in Australia in March 2016 and detained on 5 July 2016. He has been in detention for less than two years and is not subject to review under s 486N.

Ms X

IHMS advised that Miss X has a complex history of deteriorating mental health. She initially presented with extensive anxiety and secondary bed wetting, having previously disclosed thoughts of self-harm. In December 2014 a psychiatrist prescribed her with antidepressant medication. In February 2015 a psychiatrist determined that she was suffering from continuing severe anxiety symptoms and advised that she should not be returned to an offshore environment due to her complex mental health issues. She commenced specialist counselling in July 2015 which she continues to attend. She was also seen by an IHMS psychologist and child and adolescent psychiatrists.

In February 2016 Miss X was reviewed by a psychiatrist and diagnosed with separation anxiety disorder and post-traumatic stress disorder. She was prescribed with further medication to treat her ongoing severe anxiety and bed-wetting. In November 2016 presented as sad, withdrawn and anxious and a paediatrician advised she was suffering from significant post-traumatic stress disorder with anxiety and depression following her experiences at Nauru RPC. Ongoing psychological and psychiatric intervention was recommended. Her antidepressant medication was increased and a referral for psychiatric counselling was made. In December 2016 her GP noted that any news regarding Nauru appeared to exacerbate her mental and physical health issues.

IHMS advised that Miss X was also treated for physical health concerns including urinary and renal issues and gastrointestinal matters.

9 July 2014

According to the statement of claim lodged in the NTSC, Miss X, while on Nauru, exhibited sexualised behaviour which was inconsistent with developmentally appropriate behaviour.

Detention incidents

15 April 2015

An Incident Report recorded that while in restricted detention Mr X was allegedly involved in a major disturbance by multiple detainees which resulted in property damage.

Ombudsman assessment/recommendation

Mr X, Ms Y and their daughter were detained on 9 September 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.

The family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because the family arrived after 19 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, Ms Y and Miss X all have medical conditions that 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 notes with concern that a psychiatrist determined that seven-year-old Miss X was suffering from continuing severe anxiety and advised that she should not be returned to an offshore detention environment due to her complex mental health issues. Her GP further noted that any news regarding Nauru appeared to exacerbate her mental and physical health issues.

The Ombudsman notes that under current policy settings the family is 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 the family's immigration status.