

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	Stateless, born in Country A
Year of birth	1987
Total days in detention	912 (at date of DIBP's latest review)

Family details

Family members	Ms Y (wife)	Miss Z (daughter)
Citizenship	Stateless, born in Country A	Stateless, born in Australia
Year of birth	1984	2013
Total days in detention	912 (at date of DIBP's latest review)	854 (at date of DIBP's latest review)

Ombudsman ID	1002486-O
Date of DIBP's reviews	30 August 2016, 27 October 2016 and 27 February 2017

Detention history

15 September 2013	Mr X and Ms Y were 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.
26 September 2013	Mr X and Ms Y were transferred to Darwin Airport Lodge (APOD).
15 November 2013	The family was transferred to Bladin APOD.
27 March 2014	Transferred to an APOD, Christmas Island.
11 April 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 March 2015	Returned to Australia and re-detained under s 189(1). The family ² was transferred to Wickham Point APOD.
2 March 2016	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.

² Mr X and Ms Y's second child, Master P, was born in Australia in June 2015 and is the subject of Ombudsman assessment 1002699.

Visa applications/case progression

<p>Mr 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 Mr X and Ms Y's method of arrival and transfer to an RPC.</p> <p>The family was returned to Australia for medical treatment on 27 March 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>	
1 October 2015	The family's legal representative lodged Australian citizenship applications for Miss Z and her brother.
23 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for type 2 diabetes and high cholesterol. He was referred for annual diabetes and glaucoma tests with an optometrist and prescribed with medication. Mr X was monitored by the IHMS medical team who noted that he was not consistent with his daily medication. He was educated on the management of his condition and continued to be monitored by a general practitioner (GP). Mr X was also referred for cardiac investigative testing following ongoing chest pain and was awaiting a specialist review at the time of the department's latest review.</p> <p>IHMS further advised that Mr X disclosed a history of torture and trauma and declined a referral for specialist counselling.</p>
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Ms Y

<p>IHMS advised that Ms Y attended psychological counselling for management of depression, anxiety and insomnia related to her prolonged immigration detention and situational stress. She was prescribed with antidepressant medication which she later ceased after experiencing side effects. Her condition continued to be monitored by a GP and the mental health team.</p> <p>IHMS further advised that Ms Y received treatment for gynaecological issues and pregnancy related health concerns. She was prescribed with medication for joint inflammation and a vitamin deficiency.</p>	
October 2013	Gave birth to her daughter without complication.
June 2015	Gave birth to her son without complication.

Miss Z

<p>IHMS advised that Miss Z received treatment for gastroenteritis and reoccurring bronchitis.</p>	
17 November 2014	IHMS reported that Miss Z was reviewed by a GP after her father allegedly shook her. The matter was reviewed by the IHMS medical team and no further action was required.

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 15 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.

The family was 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 the family remains 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 further notes with concern advice from IHMS that Ms Y requires ongoing treatment for mental health concerns related to her prolonged detention and situational stress.

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.