

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 Ms X and her children who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002431-O was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X (and children)
Citizenship	Stateless, born in Country A
Year of birth	1976

Family details

Family members	Ms Y (daughter)	Mr Z (son)
Citizenship	Stateless, born in Country B	Stateless, born in Country B
Year of birth	1995	1996

Family members	Master P (son)	Miss Q (daughter)
Citizenship	Stateless, born in Country B	Stateless, born in Country B
Year of birth	2001	2006

Ombudsman ID	1002431-O1
Date of department's reports	21 June 2017 and 17 December 2017
Total days in detention	1,276 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community.¹

Recent visa applications/case progression

The Department of Home Affairs (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 a Regional Processing Centre (RPC) on completion of their treatment.	
21 June 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.
22 August 2017	The family lodged an application with the High Court seeking an injunction to prevent their removal from Australia. The matter remained ongoing at the time of the department's latest report.

¹ The family was granted a placement in the community under s 197AB of the *Migration Act 1958* and remain in immigration detention.

Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that Ms X was previously diagnosed with major depression and anxiety, but had not raised concerns about her mental health condition during this assessment period. IHMS reported that although Ms X had no acute mental health issues at that time, her mental health and wellbeing was likely to deteriorate should she be returned to Nauru RPC.

IHMS further advised that Ms X received treatment for multiple physical health concerns, including chronic back pain, headaches and abdominal pain. She was identified as a tuberculosis (TB) contact in 2014 and monitored as per state policy with no further review required.

Ms Y

IHMS advised that Ms Y attended specialist counselling and was prescribed with antidepressant medication for the management of a major depressive disorder. A specialist counselling service reported that she presented with severe symptoms of depression, anxiety and post-traumatic stress disorder. Ms Y reported experiencing feelings of shame and guilt, hopelessness and worthlessness, as well as major sleeping difficulties, flashbacks, nightmares and thoughts of suicide. It was reported that Ms Y's symptoms were exacerbated by family-related stress and pressure from her parents to marry. A treating counsellor recommended that Ms Y stay with other family members when she becomes distressed at home and to attend ongoing counselling. She was also referred to a psychiatrist for review in March 2017.

IHMS further advised that Ms Y was monitored by a general practitioner (GP) and prescribed with medication for multiple physical health concerns, including a kidney infection and anaemia. She was identified as a TB contact in 2014 and monitored as per state policy with no further review required.

28 December 2016 and
7 March 2017

Transported to hospital by ambulance on two occasions for abdominal pain and chest tightness.

Mr Z

IHMS advised that Mr Z attended hospital on 19 June 2017 after he presented with swelling and bruising to multiple areas of his body following an alleged assault. He underwent investigative testing and no abnormalities were identified. IHMS reported that no further concerns were reported following his discharge.

Mr Z was also transported to hospital by ambulance for treatment of a cardiac condition following a viral infection in July 2017. He was identified as a TB contact in 2014 and monitored as per state policy with no further review required.

29 July 2017

An Incident Report recorded that Mr Z was admitted to hospital for pain, fever and difficulty breathing related to a lung infection.

Master P

IHMS advised that Master P underwent investigative testing in October 2016 after presenting with chest pain and no abnormalities were identified. In January 2017 he was prescribed with medication for epigastric pain and referred for pathology and investigative testing.

Master P was identified as a TB contact in 2014 and monitored as per state policy with no further review required.

Miss Q

IHMS advised that Miss Q was identified as a TB contact in 2014 and monitored as per state policy with no further review required.

Other matters

Ms X's husband, Mr R, is an Australian citizen and they remain separated.

Ms X's fifth child, Miss S, was born in Australia in December 2016.

On 21 June 2017 the department advised that Miss S is not subject to immigration detention because she is an Australian citizen due to her father's citizenship. Miss S resides with her mother and siblings at a community placement address on a temporary basis.

Ombudsman assessment

Ms X and her children were detained on 20 October 2013 after arriving in Australia by sea and have remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than three and a half years.

Ms X and her children were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and her children arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving Ms X and her children's immigration status while noting ongoing mental health concerns.

On 14 June 2017 the Minister advised that under current legislation and policy settings, Ms X and her children remain subject to return to an RPC on completion of their treatment.

The Ombudsman notes with concern that the family's return to an RPC is likely to be protracted due to the ongoing mental health concerns of Ms X and Ms Y, and the fact that Ms X's fifth child is an Australian citizen and not subject to immigration detention.

The Ombudsman notes IHMS's advice that Ms Y requires ongoing specialist treatment for mental health concerns and that Ms X's mental health would likely deteriorate if she was returned to Nauru RPC.

The Ombudsman notes with concern that it appears likely that the family will remain in detention for a prolonged and uncertain period while they receive medical treatment. The Ombudsman further notes the government's duty of care to detainees and the serious risk to mental and physical health posed by a prolonged and uncertain period of detention.