

**ASSESSMENT BY THE COMMONWEALTH AND
IMMIGRATION 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	1956

Family details

Family members	Ms Y (daughter)
Citizenship	Country A
Year of birth	1982

Ombudsman ID	1002465-O
Date of DIBP's reviews	2 August 2016 and 31 January 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

26 July 2013	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.
16 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
24 January 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Bladin APOD.
26 February 2015	Transferred to Facility B.
7 May 2015 – 12 November 2015	Transferred three times between Facility B and Facility C.
11 February 2016	Transferred to Facility D.
18 May 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.

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 they 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 24 January 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>	
5 May 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 specialist treatment for complex mental health concerns, including a personality disorder, major depressive disorder and anxiety with psychotic symptoms. Ms X was admitted to a psychiatric hospital on 8 May 2015 after presenting with hallucinations, disturbed sleep and suicidal thoughts and received 13 treatments of electroconvulsive therapy (ECT). She was discharged on 17 August 2015 and a treating psychiatrist recommended that she be transferred to community detention in Sydney to be closer to her sister. IHMS reported that her mental health deteriorated upon her return to restricted detention and she was re-admitted to a psychiatric hospital on 12 November 2015. She received a further six ECT treatments and was discharged on 25 January 2016.</p> <p>Following her transfer to community detention, Ms X attended regular psychological counselling and her mental health continued to be monitored by a general practitioner (GP) and hospital mental health team. She was awaiting a psychiatry review at the time of IHMS's latest report.</p> <p>IHMS further advised that Ms X received treatment for gastritis, osteoarthritis and associated chronic knee pain. She was prescribed with medication and her condition continued to be monitored by a GP.</p>	
15 January 2014	An Incident Report recorded that Ms X refused food and fluid.
8 April 2015	Placed on Psychological Support Program (PSP) observations and transported to hospital for treatment following an incident of self-harm.
10 April 2015 and 21 April 2015	Incident Reports recorded that Ms X self-harmed.
3 February 2016	Placed on Supportive Monitoring and Engagement observations and reviewed by a psychiatrist after attempting self-harm and expressing suicidal thoughts.
8 May 2015 – 17 August 2015	Admitted to a psychiatric hospital.
12 November 2015 – 25 January 2016	Admitted to a psychiatric hospital.

Ms Y

<p>IHMS advised that Ms Y attended specialist counselling and was prescribed with medication for the management of depression, anxiety, post-traumatic stress disorder, insomnia and chronic stress related to her prolonged detention and concern for her mother’s mental health. In October 2013 she was placed on PSP observations after expressing thoughts of suicide and in April 2016 a psychiatrist advised that Ms Y and her mother’s mental health may improve if they were transferred to community detention. Following her transfer to community detention, Ms Y’s mental health continued to be monitored by a GP and psychiatrist as required.</p> <p>IHMS further advised that Ms Y was prescribed with medication for multiple physical health concerns, including gastritis and chronic back and neck pain. She attended physiotherapy and was awaiting a gastroenterology appointment at the time of IHMS’s latest report.</p>	
1 October 2013	An Incident Report recorded that Ms Y threatened self-harm.
30 March 2015 and 9 October 2015	Incident Reports recorded that Ms Y was transported to hospital via ambulance for physical health concerns.
3 February 2016	An Incident Report recorded that Ms Y self-harmed.

Ombudsman assessment/recommendation

<p>Ms X and Ms Y were detained on 26 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 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 advice from IHMS that Ms X and Ms Y require ongoing treatment for complex mental health concerns.</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>
