

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 her daughter 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
Citizenship	Country A
Year of birth	1971

Family details

Family members	Ms Y
Citizenship	Country A
Year of birth	1998

Ombudsman ID	1002494-O
Date of DIBP's reviews	4 September 2016 and 5 March 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

13 August 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, Christmas Island.
5 September 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 September 2014	Returned to Australia and re-detained under s 189(1). Ms X was transferred to Sydney Immigration Residential Housing (IRH). Ms Y was transferred to a hospital and reunited with her mother on 23 January 2015.
12 February 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

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.

Ms Y was returned to Australia for medical treatment on 27 September 2014 with her mother Ms X. 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.

5 February 2015

The Minister intervened under s 197AB to allow Ms X and Ms Y to reside in community detention.

Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that, while in restricted detention, Ms X attended counselling and received mental health support for the management of an adjustment disorder and symptoms of depression and anxiety. No concerns regarding her mental health have been reported following her placement in community detention.

IHMS further advised that Ms X received treatment for gynaecological concerns.

Ms Y

IHMS advised that Ms Y regularly engaged with the mental health team and attended counselling for the management of a major depressive disorder, acute stress and post-traumatic stress disorder. She reported difficulties coping with the conditions of restricted detention at Nauru RPC. Ms Y attempted suicide in September 2014 and was returned to Australia for medical treatment. While in hospital in December 2014, Ms Y attempted suicide after receiving upsetting news regarding her immigration pathway. In January 2015 she was discharged from hospital after her mood had improved and she was assessed as being at low risk of suicide.

Upon transfer to community detention Ms Y engaged with a psychiatrist on three occasions but did not respond well to psychotherapy and declined further consultation. She continues to be monitored by a general practitioner. IHMS advised that it was currently awaiting a psychiatric assessment of Ms Y's suitability to be returned to Nauru RPC. However, in July 2016 an IHMS medical director advised that it was clinically inappropriate at this time for Ms Y to be returned to Nauru RPC as she remains at risk of depression and suicide when stressed.

IHMS further advised that Ms Y was referred to a neurologist for ongoing headaches and referred for an ultrasound and prescribed with pain relief medication for abdominal pain.

Detention incidents

Ms X and Ms Y have allegedly been involved in multiple minor behavioural incidents in detention including displaying abusive and aggressive behaviour towards detention centre staff.

Other matters

14 December 2014	Ms X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to the conduct of detention centre staff at Sydney IRH. On 19 March 2015 the department provided a response and on 7 April 2015 the complaint was finalised.
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Ombudsman assessment/recommendation

Ms X and Ms Y were detained on 13 August 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.

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.

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 Ms Y has significant mental health concerns and that in July 2016 a possible return to Nauru RPC was assessed as clinically inappropriate as she remains at risk of depression and suicide.

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.