

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 Mr X, Ms Y and their children who have remained in immigration detention for a cumulative period of more than 36 months (three years).

The first assessment 1002343-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1980

Family details

Family members	Ms Y (wife)	Ms Z (daughter)
Citizenship	Country A	Country A
Year of birth	1976	1998

Family members	Miss P (daughter)	Master Q (son)
Citizenship	Country A	Country A
Year of birth	2000	2012

Ombudsman ID	1002343-O1
Date of DIBP's reviews	16 September 2016 and 17 March 2017
Total days in detention	1,094 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002343-O) the family¹ has remained in community detention.

Recent visa applications/case progression

The Department of Immigration and Border Protection (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 a Regional Processing Centre (RPC) on completion of their treatment.

¹ Mr X and Ms Y's fourth child, Miss R was born in Australia in November 2015 and detained on 6 February 2016. She has been in detention for less than two years and is not subject to review under s 486N.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling for the management of a history of torture and trauma. On 31 March 2016 he presented to the emergency department at a hospital as a high suicide risk after attending an appointment with a psychologist. He was assessed and changes made to his medication regime prior to discharge. He attended a follow up review with a general practitioner (GP) on 11 April 2016 and continued to be monitored.

IHMS further advised that Mr X received treatment for physical concerns including gastroesophageal reflux disease. At the time of IHMS's latest report Mr X was awaiting an appointment for orthopaedic review of recurrent shoulder pain.

19 December 2016

An Incident Report recorded that Mr X threatened self-harm.

Ms Y

IHMS advised that Ms Y attended specialist counselling for ongoing support in January 2016 and reported difficulties with her family's situation issues. She also reported suicidal ideation at times from being overwhelmed. She further advised that she had recurring intrusive thoughts from her experiences on Nauru. At a follow up session in February 2016, coping strategies were discussed after Ms Y was found to be quite distressed due to uncertainty about her family's future. In March 2016 the counsellor informed IHMS that Ms Y did not wish to continue counselling and in August 2016 Ms Y informed a GP that she did not wish to receive ongoing mental health follow up.

IHMS further advised that Ms Y received treatment for carpal tunnel syndrome and was referred for physiotherapy for ongoing back pain.

Ms Z

IHMS advised that in January 2016 Ms Z was referred to a psychiatrist at a child and adolescent mental health service for cognitive behavioural therapy and ongoing psychological counselling. In February 2016 the treating psychiatrist advised that she continued to present with clear features of major depression and post-traumatic stress disorder (PTSD) and had only partially responded to psychotherapy and psychiatric medication. The psychiatrist further advised that her mental state remained fragile as she continued to experience a high level of anxiety, flashbacks and nightmares relating to her experiences on Nauru. As a result the psychiatrist recommended that Ms Z continue ongoing specialist mental health support during her protracted period of recovery. Additionally the psychiatrist advised that there would be a significant risk of deterioration in her mental state and high risk of suicide if Ms Z were to be returned to Nauru where a number of traumatic events, including an alleged sexual assault, had occurred.

The most recent report from the psychiatrist in January 2017 outlined that Ms Z's mental health had not improved and stated that due to her ongoing immigration uncertainty, significant progress in her PTSD treatment could not be made. The psychiatrist again highlighted the significant risk of being returned to Nauru RPC would pose for Ms Z's mental health. Ms Z continued to be seen by the psychiatrist every six to eight weeks.

IHMS further advised that Ms Z continued to receive treatment for an injury arising from an incident of self-harm in February 2015. At the time of IHMS's latest report she was awaiting a specialist appointment for a deviated septum which was causing a nasal blockage.

Miss P

IHMS advised that it was seeking documentation in relation to appointments Miss P had attended following a referral to a child and adolescent health service under a mental health treatment plan for complex mental health concerns including a history of torture and trauma, major depression, PTSD and an adjustment disorder.

IHMS advised that a GP continued to monitor Miss P in relation to an inherited blood disorder and a vitamin B12 deficiency.

Master Q

IHMS advised that Master Q presented to a GP in March 2016 with breathing and throat concerns. An X-ray indicated mild enlargement of the throat glands. In April 2016 the GP referred him to a paediatric outpatient clinic and following associated sleep disturbance he was again referred in June 2016. At the time of IHMS's latest report he was awaiting an appointment.

Ombudsman assessment/recommendation

Mr X, Ms Y and their children were detained on 23 July 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than three 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's previous report (1002343-O) recommended that priority be given to resolving the family's immigration status while noting that they suffered from numerous significant mental health conditions and in the case of Ms Z and Miss P, these conditions were noted by a psychiatrist to have been caused by their experiences on Nauru.

On 8 November 2016 the Minister noted the recommendation and advised that in line with current legislation and policy settings, the family remains subject to return to an RPC on completion of their temporary transfer.

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 reported recurring intrusive thoughts from her experiences on Nauru, associated suicidal ideation and ongoing concerns regarding her family's future.

The Ombudsman also notes with concern that a psychiatrist has advised that there would be a significant risk of deterioration in Ms Z's mental state and high risk of suicide if she were to be returned to Nauru where she had experienced a number of traumatic events.

The Ombudsman notes that under current policy settings Mr X, Ms Y and their children 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 again recommends that priority is given to resolving the family's immigration status.