

# ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the third s 486O assessment on Mr X, Ms Y and their daughters<sup>1</sup> who have remained in immigration detention for a cumulative period of more than 48 months (four years). The previous assessment 1002205-O1 was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X (and family)	Ms Y (wife)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1979	1980
<b>Total days in detention</b>	1,456 (at date of DIBP's latest report)	1,456 (at date of DIBP's latest report)

## Family details

<b>Family members</b>	Miss Z (daughter)	Miss P (daughter)
<b>Citizenship</b>	Country A	Country A, born in Australia
<b>Year of birth</b>	2008	2015
<b>Total days in detention</b>	1,456 (at date of DIBP's latest report)	919 (at date of DIBP's latest report)

<b>Ombudsman ID</b>	1002205-O2
<b>Date of DIBP's report</b>	25 October 2017

## Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community.<sup>2</sup>

## 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 remains liable for transfer back to a Regional Processing Centre (RPC) on completion of Miss P's treatment.

## Health and welfare

### *Mr X*

International Health and Medical Services (IHMS) advised that Mr X was referred for psychological counselling after presenting to a general practitioner (GP) with symptoms of anxiety and an adjustment disorder, including low mood, low motivation and fatigue.

<sup>1</sup> This is the second s 486O assessment on Miss P who was previously the subject of Ombudsman assessment 1002648-O. Her timeline in detention has been aligned with her family and they are reported on together.

<sup>2</sup> The family was granted a placement in the community under s 197AB and remains in immigration detention.

*Ms Y*

IHMS advised that Ms Y previously attended psychological counselling for the management of symptoms of an adjustment disorder and depression, including panic attacks and anxiety related to caring for her children with special needs. She did not receive treatment for any major mental health concerns during this assessment period.

IHMS further advised that Ms Y received treatment for multiple physical health concerns, including gastroenterological issues, osteoarthritis and associated chronic back pain. She underwent a computed tomography scan which identified a disc bulge in her back and she was subsequently prescribed with pain relief medication and referred for physiotherapy. Ms Y was scheduled to attend a colonoscopy after presenting with worsening symptoms of a gastroenterological condition.

*Miss Z*

IHMS advised that Miss Z continued to receive treatment for multiple complex physical health concerns, including a genetic blood disorder, an eye condition, and growth and weight concerns. She underwent pathology testing for a genetic blood disorder and continued to be monitored by a GP and paediatrician. Miss Z was also monitored by a paediatrician and dietician after her father reported concerns about her food refusal behaviour and low weight. In June 2017 a treating paediatrician noted improvements in her growth and weight, and identified that Miss Z had a bacterial stomach infection which may be contributing to her poor eating patterns and nausea. She was prescribed with treatment and recommended for further testing.

Miss Z was also reviewed by an orthoptist and paediatrician for her eye condition and it was noted that her condition had not improved as she had not been patching her eye as advised. Miss Z and her parents were encouraged to implement her eye patching treatment and it was recommended that Miss Z be prescribed with new glasses. She was scheduled to attend an ophthalmology review in July 2017.

IHMS further advised that Miss Z continued to receive treatment for multiple mental health concerns, including depression, post-traumatic stress disorder and insomnia. In April 2017 it was reported that her psychosocial functioning had improved but that she continued to present with poor appetite due to pain after eating and disturbed sleep. Miss Z was reviewed by a paediatrician and prescribed with medication for insomnia related to her younger sister's crying at night and her parents were encouraged to implement a bed time routine.

*Miss P*

IHMS advised that Miss P continued to receive ongoing specialist treatment for multiple complex physical health concerns, including breathing problems, hearing loss, a genetic blood disorder, a muscular abnormality, developmental delays and feeding issues. She was reviewed by an audiologist in April 2017 who reported that Miss P’s hearing was adequate for speech and language development. She was referred for further review with an ear, nose and throat specialist for her hearing loss and was awaiting a review with an eye specialist for ongoing vision concerns.

Miss P previously underwent extensive investigative testing for a muscular abnormality and was identified to have a possible genetic disease causing problems with movement, vision, hearing, memory, ability to eat, behaviour and thought. She continued to be regularly reviewed for this condition and remained under the care of a neurogenetics team. Miss P and her family also continued to engage with a specialist sleep clinic for the management of her and her sister’s sleeping patterns, developmental delays and feeding issues. In March, April and June 2017 it was reported that Miss P had initially made significant progress but that her sleeping patterns continued to disturb the whole family. It was also reported that Miss P remained unresponsive and continued to display poor verbal communication, understanding and eye contact. She attended a weekly children’s playgroup and continued to be treated at home by a speech therapist, physiotherapist and social worker.

IHMS further advised that Miss P continued to receive treatment for multiple complex mental health concerns, including profound infant depression, a sleep regulation disorder, an emotional regulation disorder, and episodes of distress and frustration. It was reported that she cried often, screamed to communicate her needs, and remained afraid of certain situations. It was further noted that her sleeping patterns had deteriorated and that her parents had requested to stop counselling due to the distress that it caused the family. Miss P remained under the care and management of multiple specialists.

**Other matters**

25 October 2017	The department advised that Mr X’s complaint with the Australian Human Rights Commission was closed on 27 April 2017.
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### **Ombudsman assessment/recommendation**

Mr X, Ms Y and Miss Z were detained on 23 July 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 four years with no processing of their protection claims.

Mr X, Ms Y and Miss Z were transferred to an RPC and returned to Australia for medical treatment on separate occasions on 17 May 2014 and 14 June 2014. Miss P was born in Australia following their transfer and has been diagnosed with a serious medical condition that requires ongoing 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 Miss P's treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving the family's immigration status while noting their complex mental and physical health concerns.

On 13 September 2017 the Minister noted the recommendation and advised that under current legislation and policy settings, the family remains subject to return to an RPC on completion of their treatment.

The Minister further advised that the department is supporting the relevant offshore government to finalise the family's Refugee Status Determinations while they remain in Australia. However, the Ombudsman notes that this information has not been reflected in the department's 48-month report.

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. IHMS has reported that Mr X and Ms Y's daughters have been diagnosed with serious mental and physical health conditions that require ongoing specialist treatment and monitoring.

The Ombudsman notes that under current policy settings the family is not eligible to have their protection claims assessed by Australia and that without an assessment of the family's 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.