

## 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 three children<sup>1</sup> who have remained in immigration detention for a cumulative period of more than 48 months (four years). Mr X's previous assessment 1002231-O1 and Ms Y and their children's previous assessment 1002437-O were tabled in Parliament on 13 September 2017 and 14 June 2017 respectively. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X (and family)	Mr Y (wife)
<b>Citizenship</b>	Country A, born in Country B	Country A
<b>Year of birth</b>	1953	1956
<b>Total days in detention</b>	1,458 (at date of department's latest report)	1,235 (at date of department's latest report)

### Family details

<b>Family members</b>	Ms Z (daughter)	Mr P (son)	Mr Q (son)
<b>Citizenship</b>	Stateless, born in Country A	Country A	Country A
<b>Year of birth</b>	1986	1996	1998
<b>Total days in detention</b>	1,235 (at date of department's latest report)		

<b>Ombudsman ID</b>	1002437-O1
<b>Date of department's reports</b>	29 June 2017 and 17 November 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 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 remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
17 November 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.

<sup>1</sup> This is the second s 486O assessment on Ms Y and their three children. For the purpose of reporting under s 486O, their timeline in detention has been aligned with Mr X's and the family is reported on together.

<sup>2</sup> The family was granted a placement in the community under s 197AB of the *Migration Act 1958* and remains in immigration detention.

## Health and welfare

### *Mr X*

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for depression. In February 2017 Mr X was reviewed by specialists after his daughter reported concerns about his declining memory and language skills and a geriatrician identified a likely vascular cognitive impairment. In April 2017 he was reviewed by a neuropsychologist and cognitive concerns were identified. In June 2017 he was referred for investigative testing for diagnostic purposes.

IHMS further advised that Mr X continued to receive treatment for cardiac concerns, type 2 diabetes, cataracts, balance issues and a foot ulcer. In February 2017 he underwent cataract surgery and in March 2017 he was placed on a waiting list for a cardiology review. He was also monitored by a specialist falls and balance service, attended physiotherapy and was regularly reviewed by a podiatrist.

### *Ms Y*

IHMS advised that Ms Y continued to receive treatment for knee pain related to osteoarthritis and was regularly reviewed by an exercise physiologist, dietician and occupational therapist. In June 2017 Ms Y underwent investigative testing after presenting with numbness and foot and neck pain and was referred for physiotherapy.

IHMS further advised that Ms Y continued to receive treatment for additional physical health concerns, including asthma and hypertension.

### *Ms Z*

IHMS advised that Ms Z presented to a general practitioner (GP) with symptoms of anxiety and depression, including difficulty sleeping, related to the uncertainty of her immigration status. In August 2017 she was placed on a mental health care plan and referred to a psychologist. During a follow up review in October 2017 she reported ongoing sleep issues and nightmares and the GP noted that she presented with symptoms of post-traumatic stress disorder (PTSD). IHMS advised that she was awaiting an appointment to undergo a sleep study and psychology review at the time of its latest report.

IHMS further advised that Ms Z continued to receive treatment for multiple physical health concerns, including type 2 diabetes, obesity, ear concerns and knee pain. IHMS advised that she was awaiting an appointment with an ear nose and throat (ENT) specialist and ophthalmologist at the time of its latest report.

### *Mr P*

IHMS advised that Mr P presented to a GP with symptoms of anxiety and PTSD in October 2017 and was referred for psychological counselling.

IHMS further advised that Mr P continued to await an appointment with an ENT specialist for review of a previous nose injury.

### *Mr Q*

IHMS advised that Mr Q did not receive treatment for any major physical or mental health concerns during this assessment period.

## Ombudsman assessment

The family was detained on 9 September 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than four years.

Mr X was transferred to an RPC and returned to Australia for medical treatment on 29 September 2013 and 2 February 2014. Ms Y and their children were transferred to an RPC and returned to Australia for medical treatment on 5 July 2014. 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 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 on Mr X recommended that priority be given to resolving his immigration status while noting his ongoing mental health concerns.

On 13 September 2017 the Minister advised that Mr X had been temporarily transferred to Australia for medical treatment and the department was supporting the relevant offshore government to finalise his Refugee Status Determination while he remains in Australia.

The Ombudsman's previous assessment on Ms Y and her children also recommended that priority be given to resolving their immigration status.

On 14 June 2017 the Minister advised that under current legislation and policy settings, Ms Y 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 their ongoing mental and physical health concerns.

The Ombudsman notes IHMS's advice that Mr X and Ms Y continued to receive treatment for multiple physical health concerns and Ms Z presented with mental health concerns related to the uncertainty of her immigration pathway.

The Ombudsman further 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.