

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 Ms X and Mr Y who have remained in immigration detention for a cumulative period of more than three and a half years. The previous assessment 1002462-O was tabled in Parliament on 6 September 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X (and husband)	Mr Y (husband)
Citizenship	Country A	Country A
Year of birth	1986	1980
Ombudsman ID	1002462-O1	
Date of department's reports	27 July 2017 and 25 January 2018	
Total days in detention	1,276 (at date of department's latest report)	

Recent detention history

Since the Ombudsman's previous assessment, Ms X and Mr Y have continued to be placed in the community.¹

Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings Ms X and Mr Y are 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.

27 July 2017 and
25 January 2018

The department advised that it is supporting the Government of Nauru to finalise the Refugee Status Determination of Ms X and Mr Y while they remain temporarily in Australia for medical treatment.

Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that Ms X was reviewed fortnightly by a psychologist and monthly by a psychiatrist for the management of symptoms of anxiety and depression that is triggered by stress and the uncertainty of her immigration status. A psychiatrist advised that a speedy resolution of Ms X's immigration status would be beneficial for her mental health and would prevent further deterioration in her mental state. The psychiatrist advised that there had been minimal improvement in Ms X's mental state despite regular review and treatment. Following further psychological review a psychologist strongly recommended that Ms X not be returned to a detention facility or to Nauru due to the high risk of worsening her mental state.

IHMS further advised that Ms X was monitored for physical health concerns including abdominal and shoulder pain and a bacterial stomach infection.

¹ Ms X and Mr Y were granted a placement in the community under s 197AB of the *Migration Act 1958* and remain in immigration detention.

Mr Y

IHMS advised that Mr Y was prescribed with medication and continued to engage with a psychologist and psychiatrist for the management of an adjustment disorder. A psychiatrist noted that Mr Y experiences anxiety and worry about his unresolved immigration status as well as sleeping difficulties and low mood associated with the possibility of being returned to Nauru. A psychologist reported that Mr Y presents with symptoms of post-traumatic stress disorder and recommended that he regularly engage in psychiatric review to ensure that he copes effectively in the community.

IHMS further advised that Mr Y continued to receive treatment for chronic back and leg pain and was referred to a pain clinic with an appointment pending.

Ombudsman assessment

Ms X and Mr Y were detained in 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 three and a half years.

Ms X and Mr 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's previous assessment recommended that priority be given to resolving Ms X and Mr Y immigration status while noting ongoing mental health concerns.

On 6 September 2017 the Minister advised that the department is supporting the Government of Nauru to finalise the Refugee Status Determination of Ms X and Mr Y while they remain temporarily in Australia for medical treatment.

Ms X and Mr Y's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.

IHMS has advised that Ms X and Mr Y have ongoing mental health concerns associated with the uncertainty of their immigration status and the possibility of being returned to Nauru. IHMS further advised that a psychologist strongly recommended that Ms X not be returned to a detention facility or to Nauru due to the high risk of worsening of her mental state.

It appears likely that Ms X and Mr Y will remain in detention for a prolonged and uncertain period while they receive medical treatment, posing a serious risk to their mental and physical health.