

## 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 son, Master Y, who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Ms X (and son)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1969

### Family details

<b>Family members</b>	Master Y (son)
<b>Citizenship</b>	Country B, born in Country A
<b>Year of birth</b>	1999

<b>Ombudsman ID</b>	1002528-O
<b>Date of DIBP's reviews</b>	12 October 2016 and 12 April 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

19 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 (APOD), Christmas Island.
21 February 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
17 April 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
18 April 2015	Transferred to Facility C.
21 March 2016	Transferred to community detention.

### Visa applications/case progression

Ms X and her son 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 Ms X and her son 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 X and her son were returned to Australia for medical treatment on 17 April 2015.

The department has advised that under current policy settings Ms X and her son 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.

<sup>1</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

16 March 2016	The Minister intervened under s 197AB to allow Ms X and her son to reside in community detention.
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**Other legal matters**

January 2016	Master Y attended a children’s court in relation to charges of property damage. He was placed on a diversion plan and in March 2016 the matter was discharged.
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**Health and welfare**

*Ms X*

<p>International Health and Medical Services (IHMS) advised that Ms X received treatment for multiple physical health concerns, including gynaecological issues, headaches, and chronic back, hip and knee pain related to osteoarthritis. Ms X attended regular physiotherapy and utilised crutches for mobility. Her condition was monitored by a general practitioner (GP) and she was awaiting appointments with a gynaecologist, orthopaedic surgeon and optometrist.</p> <p>IHMS further advised that Ms X attended counselling for management of an adjustment disorder and depressed mood relating to situational stress. In November 2016 she was provided with medication after presenting with symptoms of severe depression and post-traumatic stress disorder and was considered to be at risk of suicide. On 23 February 2016 she was placed on Supportive Monitoring and Engagement (SME) observations after presenting with stress and detention fatigue. Her mental health continued to be monitored by a GP, psychiatrist and psychologist and in January 2017 improvements in her condition were noted.</p>	
4 August 2015	An Incident Report recorded that Ms X expressed thoughts of self-harm.

*Master Y*

<p>IHMS advised that in March 2014 Master Y received treatment for a hand fracture after punching a wall in anger. He was referred to the mental health team for support and anger management sessions and IHMS reported that his anger issues had settled. In May 2015 he was placed on SME observations after he self-harmed as a form of protest and threatened suicide if he was returned to an RPC. He was subsequently reviewed by a psychiatrist and attended specialist counselling. IHMS advised that his condition continued to be monitored by a GP.</p>	
7 May 2015	An Incident Report recorded that Master Y self-harmed.

**Detention incidents**

<p>Incident Reports recorded that Master Y had been involved in multiple behavioural incidents, including displaying abusive and aggressive behaviour towards detention centre staff.</p>
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**Other matters**

<p>Ms X’s husband and Master Y’s father, Mr Z, is an Australian citizen. Mr Z advised the department that is he estranged from his wife and son and does not wish to have contact with them.</p>
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### **Ombudsman assessment/recommendation**

Ms X and her son were detained on 19 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 with no processing of their protection claims.

Ms X and her son were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and her son arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that Ms X and her son have medical conditions that require ongoing 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 that under current policy settings Ms X and her son are not eligible to have their protection claims assessed in Australia and that without an assessment of Ms X and her son's claims it appears likely they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving Ms X and her son's immigration status.