

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Miss X who has remained in immigration detention for a cumulative period of more than 24 months (two years).

<b>Name</b>	Miss X
<b>Citizenship</b>	Country A, (born to parents <sup>1</sup> in immigration detention)
<b>Year of birth</b>	2015
<b>Ombudsman ID</b>	1002633-O
<b>Date of DIBP's reviews</b>	30 March 2017 and 14 July 2017 <sup>2</sup>
<b>Total days in detention</b>	836 (at date of DIBP's latest review)

### Detention history

31 March 2015	Following her birth to parents in immigration detention, Miss X was detained under s 189(1) of the <i>Migration Act 1958</i> . She was transferred to Wickham Point Alternative Place of Detention.
19 April 2015	Miss X and her family were transferred to Melbourne Immigration Transit Accommodation.
7 January 2016	The family was transferred to community detention.

### Visa applications/case progression

<p>The Department of Immigration and Border Protection (the department) advised that as Miss X's parents arrived in Australia by sea after 19 July 2013 and were transferred to a Regional Processing Centre (RPC), Miss X and her family<sup>3</sup> are barred under ss 46A and 46B from lodging a valid protection visa application.</p> <p>Miss X's mother was returned to Australia for medical treatment on 15 June 2014 and on 9 August 2014 her father was returned to Australia and reunited with his wife.</p> <p>The department has advised that under current policy settings Miss X is not eligible to have her protection claims assessed in Australia and remains liable for transfer to an RPC on completion of her mother's treatment.</p>	
29 December 2015	The Minister intervened under s 197AB to allow Miss X and her family to reside in community detention.

<sup>1</sup> Miss X's parents, Mr Y and Ms Z, are the subjects of Ombudsman assessments 1002449-O1 and 1002411-O1 respectively.

<sup>2</sup> The department provided an additional review to combine Mr Y, Ms Z and Miss X's cases and advised that the family would be reported on together in future.

<sup>3</sup> Miss X's brother, Master P, was born in Australia in May 2016 and detained on 16 June 2016. He has been in detention for less than two years and is not subject to review under s 486N.

## Health and welfare

International Health and Medical Services (IHMS) advised that Miss X received specialist treatment for behavioural concerns, feeding issues and an enlarged liver. Miss X underwent investigative testing and was cleared of any further liver concerns.

Miss X was reviewed by a specialist on 6 July 2015 who reported that there was a lack of attachment between mother and child related to her mother's significant mental health issues. Miss X's parents were provided with education and support and the family attended two residential programs at an early parenting services centre in October 2015 and December 2016. IHMS advised that improvements in Miss X's condition were noted and she continued to be monitored by a general practitioner and specialist support services.

## Detention incidents

14 April 2015	An Incident Report recorded that Miss X's mother was closely monitored by Serco officers after she expressed thoughts of harming her daughter. IHMS noted that Miss X's mother had been diagnosed with post-natal depression. The authorities were notified and the matter was finalised on 10 May 2015 with no further action required.
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## Ombudsman assessment/recommendation

Miss X was detained on 31 March 2015 following her birth to parents in immigration detention. She has been held in detention for more than two years with no processing of her protection claims.

Miss X's parents were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Miss X's parents arrived after 19 July 2013, Miss X and her family remain liable for transfer back to an RPC on completion of her mother's 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 Miss X is not eligible to have her protection claims assessed in Australia and that without an assessment of Miss X's claims it appears likely she will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving Miss X's immigration status.