

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 Mr X and Ms Y and their children who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1984	1982
Total days in detention	912 (at date of DIBP's latest report)	912 (at date of DIBP's latest report)

Family details

Family members	Miss Z (daughter)	Master P (son)
Citizenship	Country A	Country A
Year of birth	2009	2010
Total days in detention	912 (at date of DIBP's latest report)	912 (at date of DIBP's latest report)

Family members	Master Q (son)	Master R (son) ¹
Citizenship	Country A	Country A, born in Australia
Year of birth	2013	2015
Total days in detention	912 (at date of DIBP's latest report)	824 (at date of DIBP's latest report)

Ombudsman ID	1002597-O
Date of DIBP's reports	8 February 2017 and 9 August 2017

Detention history

27 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to Christmas Island Immigration Detention Centre.
2 August 2014	Transferred to Nauru Regional Processing Centre (RPC). ²
14 February 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Facility B.
26 February 2015	Transferred to Facility C.

¹ Master R was born in Australia in April 2015 and was subject to an individual assessment under s 486N. He was previously reported on in Ombudsman assessment 1002669-O and is now included in his family's assessment.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

8 March 2016	Placed in the community. ³
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Visa applications/case progression

<p>The family arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that they are barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of their method of arrival and transfer to an RPC.</p> <p>They were returned to Australia from an RPC for medical treatment on 14 February 2015.</p> <p>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 an RPC on completion of their treatment.</p>	
23 February 2016	The Minister intervened under s 197AB to grant the family a community placement.
9 August 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.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X reported a history of torture and trauma and received treatment for situational depression. Mr X was advised of the availability of specialist counselling and he reported that he would pursue a referral if needed.</p> <p>IHMS further advised that Mr X was diagnosed with hepatitis A and his condition continued to be monitored by a general practitioner (GP).</p>	
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Ms Y

<p>IHMS advised that Ms Y had disclosed a history of trauma and torture. Ms Y attended specialist counselling and her condition continued to be monitored by a GP.</p> <p>IHMS further advised that Ms Y was confirmed to be pregnant in September 2014. During her pregnancy Ms Y was diagnosed with gestational diabetes and was prescribed with medication to manage her condition. IHMS also advised that Ms Y had received provisional diagnoses of endometriosis and latent tuberculosis.</p>	
April 2015	Gave birth to her son.

Miss Z

<p>IHMS advised that Ms Y disclosed that Miss Z had a history of trauma and torture. Mr X and Ms Y were informed about the availability of specialist counselling and Miss Z's mental health continued to be monitored by a GP.</p>	
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Master P

<p>IHMS advised that Master P was diagnosed with latent tuberculosis in February 2015. He received specialised treatment and no further concerns were identified following his discharge in July 2016.</p>	
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³ The family was granted a placement in the community under s 197AB and remains in immigration detention.

Master Q

IHMS advised that during a mental health review in February 2016 Master Q did not present with any symptoms of mental illness, however a psychiatrist advised that he be placed in the community on the grounds that he had lived in detention for the majority of his life.

IHMS further advised that Master Q was diagnosed with a parasitic infection and a secondary iron deficiency. He was prescribed with medication and IHMS advised that the concern had since been resolved.

Master R

IHMS advised that Master R did not receive treatment for any major physical or mental health issues during this assessment period.

Detention incidents

12 April 2015	An Incident Report recorded that Mr X allegedly assaulted a detention centre staff member. The incident was referred to the Police on 14 April 2015 who advised that the matter would not be investigated. The matter was closed on 14 May 2015.
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Ombudsman assessment/recommendation

The family was detained on 27 July 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 two and a half years.

The family was transferred to an RPC and returned to Australia for medical 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 their treatment.

The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of the family while they remain temporarily in Australia for medical 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 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 for a prolonged period.

The Ombudsman recommends that priority is given to resolving the family's immigration status.