

## 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 sons who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002350-O1 was tabled in Parliament on 6 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X (and family)	Ms Y (wife)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1968	1972
<b>Total days in detention</b>	1,276 (at date of department's report)	1,197 (at date of department's report)

### Family details

<b>Family members</b>	Mr Z (son)	Mr P (son)	Master Q (son)
<b>Citizenship</b>	Country A	Country A	Country A
<b>Year of birth</b>	1991	1997	2001
<b>Total days in detention</b>	1,197 (at date of department's report)		

<b>Ombudsman ID</b>	1002350-O2
<b>Date of department's report</b>	22 September 2017

### Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community.<sup>1</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 remains liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.

22 September 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*

International Health and Medical Services (IHMS) advised that Mr X continued to await an appointment at a colorectal clinic and remained on a waiting list for a surgical procedure to manage a nerve condition.

<sup>1</sup> The family was granted a placement in the community under s 197AB and remains in immigration detention.

*Ms Y*

IHMS advised that Ms Y remained on a waiting list for a surgical procedure for a tongue condition and continued to await an appointment at a gynaecology clinic. She also attended physiotherapy for chronic back and neck pain.

*Mr Z*

IHMS advised that Mr Z was identified as a tuberculosis (TB) contact in 2016 and monitored as per state policy with no further review required. He continued to await an appointment at a respiratory clinic for review of chronic respiratory symptoms.

*Mr P and Master Q*

IHMS advised that Mr P and Master Q were identified as TB contacts in 2016 and monitored as per state policy with no further review required.

### **Ombudsman assessment**

The family was detained on 13 August 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 three 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 Determination of the family while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving the family's immigration status.

On 6 September 2017 the Minister advised that the department is supporting the government of Nauru to finalise the family's Refugee Status Determination while they remain in Australia.

The Ombudsman notes that the family's return to an RPC is likely to be protracted due to their ongoing physical health concerns.

The Ombudsman 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.