

# 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 Ms X, Mr Y and their daughter, Miss Z, who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years).<sup>1</sup> Ms X's previous assessment 1002411-O1, Mr Y's previous assessment 1002449-O1 and Miss Z's previous assessment 1002633-O were tabled in Parliament on 18 October 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Family members</b>	Ms X (and family)	Mr Y (husband)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1981	1984
<b>Total days in detention</b>	1,278 (at date of department's report)	1,223 (at date of department's report)

## Family details

<b>Family members</b>	Miss Z (daughter)
<b>Citizenship</b>	Country A, born in Australia
<b>Year of birth</b>	2015
<b>Total days in detention</b>	959 (at date of department's report)

<b>Ombudsman ID</b>	1002449-O2
<b>Date of department's report</b>	20 November 2017

## Recent detention history

Since the Ombudsman's previous assessment, the family<sup>2</sup> has continued to be placed in the community.<sup>3</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.

14 July 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.
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<sup>1</sup> This is the second s 486O assessment on Miss Z. For the purpose of reporting under s 486O, her timeline in detention has been aligned with her parents and they are reported on together.

<sup>2</sup> Ms X and Mr Y's second child, 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 reporting under s 486N.

<sup>3</sup> The family was granted a placement in the community under s 197AB of the *Migration Act 1958* and remains in immigration detention.

## Health and welfare

### *Ms X*

International Health and Medical Services (IHMS) advised that Ms X continued to receive treatment for multiple complex mental health concerns, including post-traumatic stress disorder (PTSD) related to her history of torture and trauma in Country A and on Nauru. Ms X also presented with low mood, low self-esteem, anxiety and attachments issues related to caring for her two children. IHMS reported that Ms X and Mr Y were provided with in home care to support them in caring for their children given their complex mental and physical health concerns.

IHMS further advised that Ms X continued to receive treatment for multiple physical health concerns, including migraines, gastroesophageal concerns, shoulder pain and a fractured back following a fall. Ms X attended physiotherapy and her condition was monitored by a general practitioner (GP).

### *Mr Y*

IHMS advised that Mr Y presented with symptoms of depression, anxiety, insomnia, obsessive compulsive disorder and stress related to concerns for his family. A treating specialist counsellor noted that Mr Y's mental health had worsened due to his physical health concerns and advised that he meets the criteria for a major depressive disorder. A psychologist noted that Mr Y's psychological functioning is unlikely to improve in the foreseeable future and recommended he attend ongoing specialist counselling. In July 2017 a psychologist noted that while Mr Y's mental health had improved in the community, there is a risk of his condition destabilising in response to stress, particularly related to the uncertainty of his future.

IHMS further advised that Mr Y continued to receive treatment for multiple physical health concerns, including chronic ankle and back pain, urological issues and osteoarthritis. In February 2017 an orthopaedic surgeon advised that Mr Y requires a wrist operation, however Mr Y declined to undergo surgery at that time. His condition continued to be monitored by a GP and he was awaiting appointments at a respiratory and urology clinic at the time of IHMS's report.

### *Miss Z*

IHMS advised that Miss Z presented with delayed speech and was referred to a children's hospital for speech therapy in March 2017. In August 2017 a GP noted that Miss Z's language skills had improved since she began attending childcare and in September 2017 the GP requested that she be able to attend further sessions.

## Ombudsman assessment

The family was detained on 27 August 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 was transferred to an RPC and returned to Australia for medical treatment on 15 June 2014. Mr Y was transferred to an RPC and returned to Australia on medical advice relating to Ms X on 9 August 2014.

The Ombudsman's previous assessments for Ms X and Mr Y recommended that the department explore options for enabling the family to receive the assistance of a carer or nanny as Ms X and Mr Y were experiencing physical and psychological difficulty caring for their children.

On 18 October 2017 the Minister advised that the department had provided the family with in home care support and its service provider had initiated ongoing programs to assist self-sufficiency while residing in the community.

The Ombudsman's previous assessments for Ms X, Mr Y and Miss Z also recommended that priority be given to resolving the family's immigration status.

On 18 October 2017 the Minister advised that the family has been temporarily transferred to Australia for medical treatment and the department is supporting the relevant offshore government to finalise their refugee status determination while they remain in Australia.

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

The Ombudsman notes IHMS's advice that Ms X continued to receive treatment for multiple complex mental health concerns, including PTSD related to her history of torture and trauma in Country A and on Nauru. IHMS also advised that Mr Y's psychologist noted that his psychological functioning is unlikely to improve in the foreseeable future and that while his mental health had improved in the community, there is a risk of his condition destabilising in response to stress, particularly related to the uncertainty of his future.

The Ombudsman notes that Ms X and Mr Y were provided with support to assist in caring for their children given their complex mental and physical health concerns.

The Ombudsman further 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.