

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O assessment on Mr X and Ms Y who have remained in immigration detention for a cumulative period of more than three and a half years. The previous assessment 1002497-O was tabled in Parliament on 18 October 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and wife)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	23 April 1985	30 December 1985
Ombudsman ID	1002497-O1	
Date of department's reports	8 September 2017 and 5 March 2018	
Total days in detention	1,276 (at date of department's latest report)	

Recent detention history

Since the Ombudsman's previous assessment, Mr X and Ms Y have continued to be placed in the community.¹

Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings Mr X and Ms Y are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
8 September 2017 and 5 March 2018	The department advised that it is supporting the Government of Nauru to finalise the Refugee Status Determination of Mr X and Ms Y while they remain temporarily in Australia for medical treatment.
5 March 2018	The department advised that Mr X is a plaintiff in ongoing court proceedings. The department further advised that it is currently reviewing a ministerial submission under s 197AD of the <i>Migration Act 1958</i> for variation of Mr X and Ms Y's community placement.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment and was reviewed by specialists for physical health concerns.

IHMS further advised that Mr X had not reported any ongoing mental health concerns and continued to be monitored by a general practitioner.

¹ Mr X and Ms Y were granted a placement in the community under s 197AB and remain in immigration detention.

Ms Y

IHMS advised that Ms Y continued to receive treatment for complex mental health concerns. Ms Y advised that the significant stress associated with her and her husband's circumstances put pressure on their relationship. She was prescribed with medication and continued to engage in therapy as required.	
September 2017	An Incident Report recorded that Ms Y went to hospital after reporting physical health concerns.

Other matters

March 2017	Ms Y lodged a complaint with the Office of the Commonwealth Ombudsman in relation to her property that remains at Nauru RPC. In May 2017 and August 2017 the department provided responses and at the time of drafting this assessment, investigation of Ms Y's complaint remained ongoing.
------------	---

Ombudsman assessment

<p>Mr X and Ms Y were detained in July 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.</p> <p>Mr X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Mr X and Ms Y arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.</p> <p>The Ombudsman's previous assessment recommended that priority be given to resolving Mr X and Ms Y's immigration status while noting ongoing mental health concerns.</p> <p>On 18 October 2017 the Minister advised that the department is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X and Ms Y while they remain temporarily in Australia for medical treatment.</p> <p>Mr X and Ms Y's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.</p> <p>IHMS has advised that Ms Y has been prescribed with medication and engages in therapy for the management of ongoing complex mental health concerns.</p> <p>It appears likely that Mr X and Ms Y will remain in detention for a prolonged and uncertain period while they receive medical treatment, posing a serious risk to their mental and physical health.</p>
