

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

Name	Ms X (and family)
Citizenship	Country A
Year of birth	1977
Total days in detention	912 (at date of DIBP's latest review)

Family details

Family members	Mr Y (husband)	Master Z (son)
Citizenship	Country A	Country A, born in Australia
Year of birth	1979	2014
Total days in detention	912 (at date of DIBP's latest review)	795 (at date of DIBP's latest review)

Ombudsman ID	1002500-O
Date of DIBP's reviews	9 September 2016, 16 September 2016, 4 January 2017 and 10 March 2017 ¹

Detention history

14 December 2013	Ms X and Mr Y were detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
18 December 2013	Transferred to Berrimah House APOD.
24 December 2013	Transferred to Nauru Regional Processing Centre (RPC). ²
25 May 2014	Ms X was returned to Australia and re-detained under s 189(1). She was transferred to Brisbane Immigration Transit Accommodation (ITA).
1 June 2014	Ms X was transferred to Nauru RPC.
27 September 2014	Ms X and Mr Y were returned to Australia and re-detained under s 189(1). They were transferred to Brisbane ITA.
27 September 2014	Transferred to Facility B.
6 January 2015	The family ³ was transferred to Facility C.

¹ The department initially provided individual 24 month reviews for Ms X, Mr Y and Master Z. The departments 30 month review, dated 10 March 2017, reported on the family members together.

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.

³ Ms X and Mr Y's son, Master Z, was born in Australia in December 2014 and detained in January 2015.

26 February 2015	Transferred to Facility B.
9 March 2016	Transferred to community detention.

Visa applications/case progression

Ms X and Mr Y arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that Ms X and Mr Y are barred under ss 46A and 46B from lodging a valid protection visa application as a result of their method of arrival and transfer to an RPC.

Ms X and Mr Y were returned to Australia for medical treatment on 25 May 2014 and 27 September 2014.

The department has advised that under current policy settings Ms X and Mr Y are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.

24 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.
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Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that Ms X received ongoing treatment for multiple physical health concerns including asthma, ovarian cysts and extensive dental concerns. She was referred for a computed tomography (CT) scan following hearing loss, chronic headaches and dizziness. The CT scan identified damage to her middle ear and she was referred for physiotherapy and specialist review.

IHMS further reported that Ms X was referred to a psychologist for anxiety, disturbed sleep and parenting concerns. The psychologist recommended that she attend further counselling.

December 2014	Ms X gave birth to her son without complication.
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Mr Y

IHMS advised that Mr Y was treated for kidney stones and a communicable disease.

IHMS further advised that in 2013 Mr Y disclosed a history of torture and trauma however he declined a referral for specialist counselling. In September 2016 Mr Y was referred to a psychologist for situational stress and attended counselling. He continued to be monitored by a general practitioner (GP).

4 June 2015	An Incident Report recorded that Mr Y was transported to hospital via ambulance following abdominal pain.
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Master Z

IHMS advised that Master Z was referred for paediatric review following food refusal and weight loss concerns. He attended occupational therapy and was referred to a dietician and speech therapist. He continued to be closely monitored by a GP.

13 July 2016	An Incident Report recorded that welfare authorities were notified as Master Z was suffering significant weight loss. In September 2016 the welfare authorities advised that no further action was required.
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Other matters

4 November 2014	The department was notified that Ms X had lodged a complaint with the Australian Human Rights Commission. On 24 April 2015 the department provided a response and on 22 July 2015 the complaint was finalised.
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Ombudsman assessment/recommendation

Ms X and Mr Y were detained on 14 December 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and half years with no processing of their protection claims.

Ms X and Mr Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and Mr Y arrived after 19 July 2013 the family remains liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that Master Z has a medical condition that requires ongoing monitoring by various specialists.

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 with concern that Mr Y attended counselling for situational stress and a psychologist recommended that Ms X continue psychological counselling for her anxiety and parental concerns.

The Ombudsman notes that under current policy settings the family is not eligible to have their protection claims assessed in Australia and that without an assessment of their claims it appears likely they will remain in detention indefinitely.

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