

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, Ms Y and their children who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002287-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1974	1977

Family details

Family members	Miss Z (daughter)	Master P (son)
Citizenship	Country A	Country A
Year of birth	2005	2012

Ombudsman ID	1002287-O1
Date of DIBP's reports	12 January 2017 and 13 July 2017
Total days in detention	1,276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment (1002287-O), the family¹ has continued to be placed in the community.²

Recent visa applications/case progression

The Department of Immigration and Border Protection (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.

13 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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¹ Mr X and Ms Y's daughter, Miss Q, was born in Australia in January 2016 and detained on 22 January 2016. She has been in detention for less than two years and is not subject to reporting under s 486N.

² The family was granted a placement in the community under s 197AB and remain in immigration detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple physical health concerns, including chronic pain in his knees, jaw, back and hand. He attended physiotherapy and was prescribed with medication for his chronic pain. Mr X was diagnosed with type 2 diabetes in June 2016 and admitted to hospital for insulin treatment. He was provided with lifestyle and stress management education and referred to an endocrinologist, dietician and ophthalmologist for review. In May 2017 he was referred for a cardiology review after presenting with chest pain and episodes of fainting.

IHMS further advised that Mr X continued to attend psychological counselling and was prescribed with medication for the management of depression, anxiety, post-traumatic stress disorder (PTSD) and a history of torture and trauma. In May 2017 he presented to a general practitioner with feelings of hopelessness, anxiety and fatigue and reported that he was experiencing nightmares and flashbacks of his past trauma.

Ms Y

IHMS advised that Ms Y received treatment for multiple physical health concerns, including chronic neck and back pain, migraines and gynaecological concerns. She attended physiotherapy and was prescribed with medication for her migraines and chronic pain. In October 2016 Ms Y underwent a gynaecological procedure and in January 2017 she underwent a surgical procedure to remove benign cysts.

IHMS further advised that Ms Y did not receive treatment for any major mental health issues during this assessment period.

13 – 15 January 2017

An Incident Report recorded that Ms Y was admitted to hospital to undergo a surgical procedure to remove benign cysts.

Miss Z

IHMS advised that Miss Z attended psychological counselling for the management of PTSD, anxiety, learning difficulties, behavioural concerns and a history of torture and trauma. A treating counsellor reported that her psychological functioning had improved following her placement in the community, however she continued to suffer from anxiety related to past experiences in an immigration detention facility. In August 2016 Miss Z was reviewed by a paediatrician who reported that her mental health continued to be affected by her parents' health concerns and the thought of being returned to Nauru RPC.

Master P

IHMS advised that Master P attended regular psychological counselling and paediatric reviews for the ongoing management of behavioural and mental health concerns, including disturbed sleep, nightmares and anger outbursts. IHMS reported that his development and mental health had improved following his placement in the community, however he continued to display fear and aggressive behaviour toward triggers related to an immigration detention facility.

IHMS further advised that Master P completed treatment for latent tuberculosis.

Ombudsman assessment/recommendation

The family was detained on 1 November 2014 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 (1002287-O) recommended that priority be given to resolving the family's immigration status.

On 8 November 2016 the Minister advised that under current legislation and policy settings, the family remains subject to return to an RPC on completion of their 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 further notes with serious concern advice from IHMS that Miss Z and Master P continued to suffer from anxiety related to past experiences in an immigration detention facility and at Nauru RPC.

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 the department continue to prioritise the resolution of the family's immigration status.