

## 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 Mr X, Ms Y and their family<sup>1</sup> who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X (and family)	Ms Y (wife)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1978	1982
<b>Total days in detention</b>	912 (at date of DIBP's latest report)	912 (at date of DIBP's latest report)

### Family details

<b>Family members</b>	Master Z (son)	Miss P (daughter)
<b>Citizenship</b>	Country A	Not stated, born in Australia
<b>Year of birth</b>	2008	2015
<b>Total days in detention</b>	912 (at date of DIBP's latest report)	807 (at the date of DIBP's latest report)

<b>Ombudsman ID</b>	1002598-O
<b>Date of DIBP's reports</b>	8 February 2017, 24 May 2017 <sup>2</sup> and 9 August 2017

### Detention history

27 July 2014	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to Facility B.
1 August 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>3</sup>
14 February 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Facility C.
26 February 2015	Transferred to Facility D.
30 March 2016	Mr X was transferred to Facility E. Ms Y, Master Z and Miss P were transferred to Facility F.
1 April 2016	Ms Y, Master Z and Miss P were placed in the community. <sup>4</sup>

<sup>1</sup> This is the first s 486O assessment on Miss P. For the purposes of reporting under s 486O, her timeline in detention has been aligned with her family and they are reported on together.

<sup>2</sup> Miss P was detained on 25 May 2015 following her birth to parents in immigration detention. Miss P was initially reported on individually under s 486N and is now reported on with her family as of their 30-month report, dated 9 August 2017.

<sup>3</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

<sup>4</sup> The family was granted a placement in the community under s 197AB and remains in immigration detention.

## Visa applications/case progression

<p>The family arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that the family is barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of their method of arrival and transfer to an RPC.</p> <p>The family was returned to Australia from an RPC for medical treatment on 14 February 2015.</p> <p>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 an RPC on completion of their treatment.</p>	
17 March 2016	<p>The Minister intervened under s 197AB to grant Ms Y, Master Z and Miss P a community placement.</p> <p>The department advised that as a result of an ongoing investigation by an external agency the Minister declined to grant Mr X a community placement.</p>
8 February 2017	<p>The department advised that Mr X had been identified as a person of interest to an external agency.</p>
23 June 2017	<p>The department was notified that Mr X is no longer of interest to an external agency.</p>
27 June 2017	<p>Mr X's case was referred on a ministerial submission for consideration under s 197AB for the grant of a community placement to be reunited with his family.</p>
9 August 2017	<p>The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of the family while they remain temporarily in Australia for medical treatment.</p>

## Health and welfare

### Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X engaged with the mental health team and specialist counselling for the management of a history of torture and trauma, post-traumatic stress disorder (PTSD) and situational anxiety. Mr X reported experiencing headaches, insomnia and nightmares from the stress of prolonged separation from his family and the uncertainty regarding his immigration status. Mr X was prescribed with antidepressant medication, and following psychiatric reviews in February 2016 and June 2017, was recommended to be released from an immigration detention facility to alleviate his mental health concerns.</p> <p>IHMS further advised that Mr X received treatment for a skin condition and elbow, knee and chest pain. He attended physiotherapy sessions, was provided with education on self-management techniques and was recommended to take pain relief medication as required.</p>	
29 May 2017	<p>Mr X was taken to hospital by ambulance for chest pain concerns.</p>

*Ms Y*

<p>IHMS advised that Ms Y engaged with the mental health team and specialist counselling for the management of a history of torture and trauma and an adjustment disorder with depressed mood. In April 2016 Ms Y was referred to a psychiatrist for a mental health review as she was having difficulties coping without her husband. Following assessment by a specialist counsellor in May 2017, Ms Y was reported as displaying symptoms of PTSD, anxiety and depression in the context of separation from her husband and caring for her children on her own. Ms Y advised that she was feeling unsafe and insecure, and that the separation had triggered past memories of torture and trauma. A specialist counsellor recommended that Ms Y continue to engage with psychological therapy.</p>	
May 2015	Ms Y gave birth to her daughter without complication.
30 March 2016	An Incident Report recorded that Ms Y threatened self-harm in relation to the separation of her family.
31 March 2016	An Incident Report recorded that Ms Y refused food and fluid as a form of protest in relation to her family's separation. IHMS advised that Ms Y resumed eating and drinking on 5 April 2016.

*Master Z*

<p>IHMS advised that Master Z engaged with specialist counselling and the mental health team for the management of an anxiety disorder, a history of torture and trauma and self-harm concerns. Master Z was found to be emotionally affected by the family's separation from his father and was referred for ongoing psychiatric and psychological therapy. A psychiatrist reported that Master Z displayed attachment difficulties and distress associated with his period in immigration detention and his family's circumstances. Master Z advised that the separation made it difficult to sleep, to go to school, and to participate in social activities. A psychiatrist advised that Master Z's anxiety was likely to continue and treatment would be unsuccessful while his circumstances remain unchanged.</p> <p>IHMS further advised that Master Z received treatment for an inner lip injury and arm pain.</p>	
29 March 2016 and 31 March 2016	Incident Reports recorded that Master Z threatened self-harm on two occasions.
1 April 2016	IHMS advised that Master Z self-harmed.

*Miss P*

<p>IHMS advised that Miss P did not receive treatment for any major physical or mental health concerns during this assessment period.</p>	
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### **Information provided by Mr X**

During an interview with Ombudsman staff on 5 September 2017 Mr X stated that he had not been provided with reasons for his family separation. He said that both he and his wife had spoken to their case managers, and that his wife had also written to the Minister to explain their situation.

Mr X stated that he had been separated from his family for over 18 months and that the entire family had been mentally affected by the situation. He advised that the whole family received counselling, including two year old Miss P, and that this was helpful as it provided them with a sense of hope. Mr X said that his family visited him three or four times a week, however the journey was difficult as the family had to walk 45 minutes each way, and the children were often distressed on the walk home. He stated that his daughter cries when she comes to visit because she does not want to leave him and his wife has to pull her away which is distressing for the whole family and impacts his mental health.

Mr X stated that he felt very upset and frustrated by his separation from his family, and that he was worried about his wife and children in the community. He stated that he was very distressed by the knowledge that his children required counselling and could not live normal lives. He explained that he had recently experienced a heart attack and that he had been informed by the doctor that this was a result of his stress. He said that he couldn't sleep without medication and claimed that the medication was beginning to affect his physical health as it makes him feel weak.

Mr X also expressed concern over the food policy at Facility E and the quality of food provided. He stated that he liked to be able to eat the traditional food his wife made, and that his wife wouldn't be able to afford the packaged food which is permitted.

### **Information provided by Ms Y**

During an interview with Ombudsman staff on 7 September 2017 Ms Y stated that the family was suffering as a result of their separation. Ms Y said that she felt isolated, exhausted and depressed and had limited support within the community. Ms Y explained that she felt like she had no one to talk to as she could not complain to her husband or children because she did not want to make things any harder for them. She stated that her children cried when they had to leave their father and they called him every night. Ms Y stated that they all attended weekly counselling sessions and she was concerned for her children's wellbeing. Ms Y advised that the family was religious but were unable to practice their ceremonies and celebrations as a result of their continued separation.

Ms Y stated that their case manager had made a submission to the Minister regarding the reunification of the family. She also explained that her family had lodged an appeal through their lawyer in relation to Nauru detainees and were waiting to hear a response. They were also being supported by their lawyer for an interview with the government of Nauru to finalise their Refugee Status Determinations.

Ms Y stated that although the family received a monthly food parcel from a community group, they were struggling to support themselves with their current allowance.

### **Ombudsman assessment/recommendation**

The family was detained on 27 July 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 two 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 Determinations of the family while they remain temporarily in Australia for medical 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 family has been separated for over a year which has caused ongoing distress and has impacted significantly on the mental health of the entire family.

On 23 June 2017 the department was notified that Mr X is no longer of interest to an external agency.

1. Given that Mr X is no longer a person of interest and in light of the the best interests of the family, the Ombudsman recommends that the Minister grant Mr X a community placement under s 197AB to reunify the family.

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.

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