

## 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 son, Master Z, who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002453-O was tabled in Parliament on 6 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Family members</b>	Mr X (and family)	Ms Y (wife)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1982	1990
<b>Total days in detention</b>	1,278 (at date of department's latest report)	1,278 (at date of department's latest report)

### Family details

<b>Family members</b>	Master Z (son) <sup>1</sup>
<b>Citizenship</b>	Country A, born in Australia
<b>Year of birth</b>	2015
<b>Total days in detention</b>	1,077 (at date of department's latest report)

<b>Ombudsman ID</b>	1002453-O1
<b>Date of department's reports</b>	15 July 2017 and 15 January 2018

### 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 medical treatment.

15 July 2017 and 15 January 2018	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> Master Z was born in Australian in January 2015 and was initially subject to an individual assessment under s 486N. He was previously reported on in Ombudsman assessment 1002589-O and is now included in his family's assessment.

<sup>2</sup> Mr X and Ms Y's second son, Master P, was born in Australia in April 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 and remains in immigration detention.

## Health and welfare

### Mr X

International Health and Medical Services (IHMS) advised that Mr X continued to receive parenting support and engaged with a paediatrician for advice on managing his son's behaviour. On 7 June 2017 IHMS reported that the family was receiving support from a case coordinator and a request had been lodged for additional child care services following recommendations from a paediatrician, psychiatrist and child health nurse. In August 2017 Mr X was prescribed with antidepressant medication after reporting that he felt unwell and was experiencing nightmares, insomnia and headaches.

IHMS further advised that Mr X continued to receive treatment for back pain.

### Ms Y

IHMS advised that Ms Y and Master P were admitted to a specialist mother and baby unit in November 2016 for mental health support. Ms Y and Master P were also reviewed at the unit in December 2016 and during a post-discharge consultation, Ms Y advised that she felt stressed and lonely.

IHMS further advised that Ms Y self-harmed in February 2017 after being notified that her son's child care had been reduced. Her community care provider notified police and Ms Y was reviewed by a general practitioner (GP). IHMS reported that Ms Y's community care provider was following up with police and authorities to develop a strategy to manage the impact of reduced child care on the family.

In April 2017 a treating psychiatrist reported that Ms Y had requested a further admission to the specialist mother and baby unit to help her bond with her son. The psychiatrist recommended that Ms Y and her husband receive ongoing psychiatric and psychological care and that the family would benefit from a coordinated care service. Ms Y was subsequently referred to a specialist service provider and attended appointments in July and August 2017. She was also prescribed with medication for insomnia and nightmares. IHMS advised that her condition continued to be monitored by a psychiatrist and GP.

IHMS further advised that Ms Y continued to receive treatment for a cardiac condition and skin concerns.

10 – 16 December 2016	Admitted to a specialist mother and baby unit.
20 February 2017	An Incident Report recorded that Ms Y self-harmed.
24 February 2017	An Incident Report recorded that Ms Y threatened self-harm and the relevant authorities were notified.

### Master Z

IHMS advised that Master Z was regularly reviewed by a paediatrician for the management of poor maternal attachment, behavioural concerns and feeding difficulties. In December 2016 a paediatrician noted that Master Z's behaviour and sleeping patterns had improved with support from his father. In March 2017 Master Z was reviewed by a paediatric specialist who reported that he remained attached to his mother and was experiencing separation anxiety and sleep issues, however attending day care had been beneficial. The paediatrician also noted that Master Z's parents continued to experience poor mental health and recommended they receive further childcare as they were socially isolated. On 7 June 2017 IHMS advised that it was awaiting the approval of further childcare and in July 2017 Master Z's parents were provided with education about managing his sleep and behaviour.

IHMS further advised that Master Z received treatment for eye concerns and a skin condition.

## Ombudsman assessment

Mr X and Ms Y were detained on 11 November 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.

Mr X and Ms Y were transferred to an RPC and returned to Australia for medical treatment on 21 July 2014. Master Z was born in Australia in January 2015.

The department advised that because Mr X and Ms Y arrived after 19 July 2013 the family remains 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 treatment.

The Ombudsman's previous assessment on Mr X and Ms Y recommended that priority be given to resolving their immigration status while noting ongoing mental health concerns.

On 6 September 2017 the Minister advised that Mr X and Ms Y were temporarily transferred to Australia for medical treatment and the department is supporting the government of Nauru to finalise their Refugee Status Determination while they remain in Australia.

The Ombudsman's previous assessment on Master Z also recommended that priority be given to resolving his immigration status.

On 7 February 2018 the Minister advised that the department is supporting the government of Nauru to finalise their Refugee Status Determination for Master Z while he remains in Australia. The Minister further advised that he is a plaintiff in an ongoing court proceeding.

The Ombudsman notes 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 the family continues to receive treatment for mental health concerns and requires ongoing support from community service providers.

The Ombudsman 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.