

**ASSESSMENT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Ms X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X
Citizenship	Country A
Year of birth	1959
Ombudsman ID	1002471-O
Date of DIBP's reviews	12 August 2016 and 10 February 2017
Total days in detention	912 (at date of DIBP's latest reviews)

Detention history

6 December 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea with her three children, Ms Y, ¹ Ms Z and Mr P. The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
8 December 2013	The family was transferred to Christmas Island Immigration Detention Centre.
23 December 2013	The family was transferred to Nauru Regional Processing Centre (RPC). ²
30 August 2014	Ms X was returned to Australia and re-detained under s 189(1). She was transferred to Wickham Point APOD.
13 September 2014	Ms Y was returned to Australia and re-detained under s 189(1) to assist with the medical treatment of Ms X. Ms Z and Mr P remained at Nauru RPC. ³
16 March 2016	Ms X and Ms Y were transferred to community detention.

Visa applications/case progression

<p>Ms X 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 Ms X is barred under ss 46A and 46B from lodging a valid protection visa application as a result of her method of arrival and transfer to an RPC.</p> <p>Ms X was returned to Australia for medical treatment on 30 August 2014.</p> <p>The department has advised that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to an RPC on completion of her treatment.</p>

¹ Ms Y is the subject of Ombudsman assessment 1002482-O.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

³ Ms Z and Mr P were in immigration detention in Australia for less than two years and are not currently subject to review under s 486N.

2 March 2016	The Minister intervened under s 197AB to allow Ms X and Ms Y to reside in community detention.
--------------	--

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X attended counselling and was prescribed with antidepressant medication for management of depression, situational stress and a history of torture and trauma. In December 2014 she was placed on Supportive Monitoring and Engagement observations following threats of self-harm related to her ongoing separation from her children. In April 2016 she was discharged from specialist counselling following her transfer to community detention.</p> <p>In November 2016 Ms X was admitted to a Psychiatric Emergency Care Centre and diagnosed with undifferentiated somatoform disorder following a deterioration in her mental health. The mental health team advised that she was experiencing depression related to the trauma of being separated from her children and a treating psychiatrist advised that her mental health would improve if she was reunited with her children. She continued to be monitored by community mental health providers and by a general practitioner (GP).</p> <p>IHMS further advised that Ms X received specialist treatment for management of chronic back and hip pain related to a previous injury. Ms X requires a wheelchair for mobility and is cared for by her daughter, Ms Y. IHMS advised that Ms X was reviewed by an orthopaedic specialist and advised to undergo hip replacement surgery, however she declined further treatment. IHMS further advised that Ms X is unable to reside with her husband in community detention due to her disability housing requirements. Her condition continues to be monitored by an occupational therapist and GP.</p>

Other matters

The department advised that Ms X's husband, Mr Q, is an Australian permanent resident.	
11 November 2014	The Australian Human Rights Commission notified the department of a complaint by Ms X and Ms Y. The department provided responses on 12 February 2015, 17 February 2015 and 14 May 2015 and on 8 August 2016 the complaint was finalised.
20 September 2016	The department was notified that Ms X's son, Mr P, had lodged a complaint with the Office of the Commonwealth Ombudsman in relation to the family's long term separation. The department provided a response on 18 October 2016 and 2 February 2017. The investigation of this complaint is ongoing and remained outstanding at the time of this assessment.

Ombudsman assessment/recommendation

Ms X was detained on 6 December 2013 after arriving in Australia by sea and has been held in detention for a cumulative period of more than two and a half years with no processing of her protection claims.

Ms X was transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.

The Ombudsman notes the advice from IHMS that Ms X has a medical condition that requires ongoing 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 notes with serious concern the reported adverse impact that Ms X's long term separation from her children at Nauru RPC is having on her mental health. The Ombudsman further notes advice from a treating psychiatrist that Ms X's mental health would improve if she was reunited with her children. Given these concerns, the Ombudsman strongly recommends that the department explore options to reunite Ms X with her children.

The Ombudsman notes that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and that without an assessment of Ms X's claims it appears likely she will remain in detention indefinitely.

The Ombudsman strongly recommends that priority is given to resolving Ms X and her family's immigration status.