

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 Mr X and his family who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1982
Total days in detention	889 (at date of DIBP's latest review)

Family details

Family members	Ms Y (wife)	Master Z (son)	Miss P (daughter)
Citizenship	Country A	Country A	Country A
Year of birth	1983	2006	2008
Total days in detention	912 (at date of DIBP's latest review)	889 (at date of DIBP's latest review)	912 (at date of DIBP's latest review)

Ombudsman ID	1002506-O
Date of DIBP's reviews	26 August 2016 (Ms Y and Miss P), 19 September 2016 (Mr X and Master Z) and 23 February 2017

Detention history

31 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family were transferred to restricted detention on Christmas Island.
22-23 January 2014	The family were transferred to Nauru Regional Processing Centre (RPC). ¹
18 April 2014	Ms Y and Miss P were returned to Australia and re-detained under s 189(1). They were transferred to Facility B.
11 May 2014	Ms Y and Miss P were transferred to Nauru Regional Processing Centre (RPC).
13 March 2015	The family were returned to Australia and re-detained under s 189(1). They were transferred to Facility C.
14 March 2015	Transferred to Facility D.
29 March 2016	Transferred to community detention.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

Visa applications/case progression

<p>Mr X and his family 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 Mr X and his family 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.</p> <p>Ms Y and Miss P were returned to Australia for medical treatment on 18 April 2014 and transferred back to Nauru RPC on 11 May 2014. The whole family were returned to Australia for medical treatment on 13 March 2015.</p> <p>The department has advised that under current policy settings Mr X and his family are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of Ms Y's treatment.</p>	
16 March 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

Other legal matters

19 September 2016	The department advised that Mr X was allegedly involved in a number of behavioural incidents which required attendance or investigation by the police.
10 November 2016	An incident report recorded that the family's community detention service provider was notified that Mr X had been charged with two offences.
22 December 2016	An incident report recorded that Mr X had received a charge letter to appear at a Magistrate's Court on 17 March 2017.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for a range of mental health concerns including a depressive disorder, mixed anxiety, post-traumatic stress disorder and a history of torture and trauma.</p> <p>From 2015 Mr X was allegedly involved in multiple incidents of anger, intimidation and aggression and there was concern that his children were witnessing these events.</p> <p>In November 2016 Mr X was said to have engaged well at counselling sessions to gain coping strategies and supportive counselling around the role of a carer. In January 2017 Mr X disclosed he was finding caring for his family stressful when his wife was unwell.</p> <p>IHMS further advised that Mr X was treated for physical health issues including neck pain from an assault and knee pain. An orthopaedic appointment in relation to the knee pain was pending at the date of IHMS's latest report.</p>
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Ms Y

IHMS advised that Ms Y had engaged intensively with the IHMS mental health team (MHT) and received specialised counselling for her mental health issues. These included a history of torture and trauma, a depressive disorder and chronic post-traumatic stress disorder. She also experienced recurring suicidal ideation.

In June 2015 Ms Y was admitted into a mental health unit for deteriorating mental health, suicidal ideation and attempted suicide. She was discharged with a diagnosis of a major depressive episode with psychotic features, in the context of psychological stressors relating to her fear of being returned to Nauru RPC.

It was reported in December 2015 that Ms Y disclosed voices instructing her to kill herself and the children. Continued support was then offered by a specialist counselling service and IHMS.

Around May 2016 Ms Y declined admission to a mental health facility for treatment of her worsening depression due to concerns about Mr X managing the children on his own. She was admitted to hospital in August 2017 following an incident of self-harm and discharged on the same day.

In September 2016 a psychologist noted that it was unlikely that Ms Y's very poor psychological functioning and high suicide risk would reduce while the family was faced with being returned to Nauru RPC.

IHMS advised that in addition to mental health concerns, Ms Y was treated for physical health issues including chronic back pain, disc herniation, sciatica, a wrist injury, recurrent kidney stones, and dental issues including root canal work and restorations.

At the date of IHMS's latest report she was awaiting appointments with a neurologist, a plastic surgeon and a specialist in relation to her kidney stones. IHMS were also awaiting a second quote for Ms Y's dental treatment plan.

11 June 2015 –
28 July 2015

Admitted to a psychiatric unit.

Master Z

IHMS advised that since Master Z's arrival in detention he received treatment for mental health conditions including separation anxiety and adjustment disorder and required mental health follow up on multiple occasions.

In April 2014 the IHMS GP noted that Master Z was displaying ongoing symptoms including nightmares and headaches. The MHT then monitored him and noted that he was displaying regressive behaviours including incontinence and wanting his mother to feed him.

IHMS's latest report recorded that Master Z continued to display symptoms of anxiety and adjustment disorder and he continued to attend psychological counselling from a specialised counselling service and remained under the care of a paediatrician.

IHMS further advised that Master Z received treatment for various physical health concerns including flat feet.

Miss P

IHMS advised that Miss P was treated and monitored for mental health conditions including a depressive disorder associated with migraines, insomnia, chronic post-traumatic stress disorder and a history of torture and trauma.

In September 2014 her parents advised she was experiencing nightmares, insomnia and incontinence. In April 2015 a specialist at a children's hospital reported severe mental health concerns and noted the detention environment was having an adverse impact on her general development.

A paediatrician reported in December 2015 that Miss P's symptoms were worsening despite the involvement of many agencies in her care because she was in a detention facility environment. She made a threat of self-harm to her parents in February 2016 but subsequently refused to engage with the mental health team.

The specialised counselling service reported in March 2016 that Miss P's diagnosis of generalised anxiety disorder remained current with worsening depressive symptoms. The counselling service's most recent report noted that she showed evidence of gradual improvement in her daily functioning and recommended ongoing counselling with appointment pending at the date of IHMS's latest report.

IHMS further advised that Miss P received treatment for a range of minor physical health conditions.

Other matters

20 October 2015	A government agency responsible for child welfare advised that there was an open investigation into the welfare of Master Z and Miss P. This followed Serco contacting the agency regarding concerns about the children's mental health because of their father's volatile behaviour and the effects of this on them.
28 October 2015	The agency advised of concerns in relation to Master Z and Miss P. Both of their parents were alleged to have made comments raising concerns of a persistent threat to the safety of the children. Additionally both children were reported to have made threats to self-harm.

Detention incidents

Incident Reports recorded that Mr X has allegedly been involved in a large number of behavioural incidents, mainly minor, including creating disturbances, behaving in an abusive or aggressive manner, assaults, and damaging property.

Ombudsman assessment/recommendation

Mr X and his family were detained on 31 July 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.

The family were transferred to an RPC and returned to Australia for medical treatment, with Ms Y and Miss P being transferred to Nauru and back on two occasions. 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 Ombudsman notes the advice from IHMS that family members have medical conditions that require 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 particular concern the impact that the fear of returning to Nauru RPC is having on Ms Y's mental health, and the significant mental health issues affecting Master Z and Miss P, which have been attributed to their experiences in restricted detention.

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

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