

## 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 Ms X and her son who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Ms X (and son)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1977

### Family details

<b>Family members</b>	Master Y (son)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	2003

<b>Ombudsman ID</b>	1002530-O
<b>Date of DIBP's reviews</b>	14 October 2016 and 15 April 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

12 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
14 October 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
18 October 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Bladin APOD.
19 October 2014	Transferred to Facility B.
8 April 2015	Transferred to community detention.

### Visa applications/case progression

<p>Ms X and her son 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 Ms X and her son 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 X and her son were returned to Australia for medical treatment on 18 October 2014.</p> <p>The department has advised that under current policy settings Ms X and her son are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.</p>	
27 March 2015	The Minister intervened under s 197AB to allow Ms X and her son to reside in community detention.

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

## Health and welfare

### Ms X

International Health and Medical Services (IHMS) advised that Ms X presented with depression, insomnia and anxiety related to her son's mental health concerns and situational stress. In December 2013 she was diagnosed with an adjustment disorder with anxious and depressed mood. In December 2015 a psychiatrist reported that Ms X's mental health had deteriorated due to her fear of being returned to Nauru RPC and the pressure of being her son's sole carer. IHMS advised that she received psychiatric and psychological support and was prescribed with antidepressant medication. Her condition continued to be monitored by a general practitioner.

IHMS further advised that Ms X received treatment for physical health concerns, including back pain and hypothyroidism.

### Master Y

IHMS advised that Master Y was previously diagnosed with attention deficit hyperactivity disorder and experiences associated claustrophobia, erratic behaviour and difficulty concentrating. On 18 December 2013 he was diagnosed with an attachment disorder and a psychiatrist reported that there was emotional disengagement between him and his mother. In April 2014 he was placed on Supportive Monitoring and Engagement observations after his condition deteriorated following non-compliance with medication.

IHMS advised that Master Y and his mother were returned to Australia from Nauru RPC for specialist counselling after Master Y reported that he had been sexually molested by another detainee. He attended a psychological review with his mother on 13 October 2014 who reported that he was experiencing poor sleep, suicidal ideation and behaving recklessly. The psychologist recommended that they be transferred to alternative accommodation as Master Y was at risk of intensifying mental health and behavioural issues. He also attended an initial appointment at a sexual assault clinic on 11 December 2014 and attended regular appointments until March 2015.

Following his transfer to community detention, Master Y was reviewed by a child psychiatrist and diagnosed with separation anxiety disorder and post-traumatic stress disorder. On 21 October 2016 he was reviewed by a child psychiatrist and improvements in his condition were reported, however it was noted that he continued to experience panic attacks and feared being returned to Nauru RPC. IHMS advised that his condition and medication was regularly monitored by a child psychiatrist and psychologist.

IHMS further advised that Master Y received treatment for physical health concerns, including enlarged adenoids and dermatitis.

8 December 2014	An Incident Report recorded that Ms X made a statement that Master Y told her he would self-harm if he was returned to Nauru RPC.
14 December 2015	An Incident Report recorded that a medical professional at a hospital notified child welfare authorities of concerns that Master Y would be returned to Nauru RPC where he had allegedly been sexually assaulted
18 and 24 February 2016	Incident Reports recorded that Master Y threatened self-harm.

### **Ombudsman assessment/recommendation**

Ms X and her son were detained on 12 October 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years with no processing of their protection claims.

Ms X and her son were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and her son arrived after 19 July 2013 they remain liable for transfer back 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 notes with serious concern advice from IHMS that Master Y was returned to Australia for specialist counselling after he reported that he had been sexually molested at Nauru RPC. The Ombudsman further notes with concern the reported adverse impact that the uncertainty of Ms X and her son's immigration pathway is having on their mental health.

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

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