

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 Ms X and Ms Y who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002418-O was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X (and daughter)
Citizenship	Country A
Year of birth	1967

Family details

Family members	Ms Y (daughter)
Citizenship	Country A
Year of birth	1992

Ombudsman ID	1002418-O1
Date of department's reports	26 May 2017 and 24 November 2017
Total days in detention	1,276 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X and Ms Y remained at Melbourne Immigration Transit Accommodation.	
7 June 2017	Placed in the community. ¹

Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings Ms X and Ms Y are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
1 June 2017	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Ms X and Ms Y a community placement.
24 November 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X and Ms Y while they remain temporarily in Australia for medical treatment.

¹ Ms X and Ms Y were granted a placement in the community under s 197AB and remain in immigration detention.

Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X continued to receive treatment for multiple mental health concerns including anxiety, depression and a history of torture and trauma. In January 2017 Ms X presented to a mental health nurse with tiredness, stress and lack of motivation. She expressed frustration in relation to her ongoing detention and the prolonged waiting period for her eye surgery. During subsequent mental health assessments, Ms X presented with distress and body pain caused by stress and concern for her daughter's wellbeing. Ms X was reviewed by a psychiatrist in May 2017 and diagnosed with anxiety and depression. She was prescribed with medication and continued to be monitored and supported by a general practitioner (GP).</p> <p>IHMS further advised that Ms X continued to receive treatment for multiple physical health concerns including gastric reflux, chronic sciatica and spinal degeneration, high cholesterol, cardiovascular issues, skin issues and deteriorating vision due to corneal scarring. In December 2016 Ms X presented to a GP with increased back pain and a physiotherapist noted that stress was exacerbating her pain. She was prescribed with pain relief medication and continued to be monitored by a GP. Ms X was also reviewed by an ophthalmologist and underwent a surgical procedure to correct her vision in April 2017.</p>	
23 December 2016	An Incident Report recorded that Ms X was transported to hospital via ambulance and treated for a foot injury.

Ms Y

<p>IHMS advised that Ms Y received treatment for multiple complex mental health issues including depression, anxiety and an adjustment disorder with anxious mood. Ms Y reported experiencing panic attacks, poor sleep, rumination, low mood, reduced motivation, a desire for social isolation and a reduced ability to cope with being in detention. In April 2017 IHMS advised that Ms Y had disclosed that she was being bullied by other detainees because of her sexual orientation. In February 2017 she was diagnosed with an adjustment disorder with anxious mood and a psychiatrist adjusted her medications accordingly. In June 2017 a psychiatrist prescribed her with medication to manage ongoing sleep issues. IHMS advised that Ms Y requested to continue counselling while she is placed in the community as she believed she had become increasingly traumatised by the incidents that she had witnessed in immigration detention.</p> <p>IHMS advised that Ms Y was treated for ongoing knee pain and gastric issues. Ms Y continued to await review by a gastroenterologist, following a referral on 8 December 2015, and IHMS advised that it was unaware of any scheduled appointments. She was scheduled to attend an appointment with an orthopaedic specialist on 28 November 2017 for review of her knee pain.</p>	
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Other matters

28 September 2017.	The department advised that the Australian Human Rights Commission closed the complaint lodged by Ms Y in June 2015.
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Ombudsman assessment/ recommendation

Ms X and Ms Y were detained on 23 July 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.

Ms X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and Ms Y 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 Determination of Ms X and Ms Y while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment noted Ms X and Ms Y's ongoing health concerns and recommended that they be considered for a community placement. The Ombudsman further recommended that priority be given to resolving their immigration status.

On 14 June 2017 the Minister advised that under current legislation and policy settings, Ms X and Ms Y remain subject to return to an RPC on completion of their treatment. The Minister also advised that the department had referred a submission to him for his consideration under 197AB for a community detention placement.

On 7 June 2017 the Minister intervened under s 197AB to grant Ms X and Ms Y a community placement.

The Ombudsman notes that under current policy settings Ms X and Ms Y are not eligible to have their protection claims assessed by Australia and that without an assessment of their claims it appears likely they will remain in detention for a prolonged period.

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 also notes IHMS's advice that Ms Y has been awaiting an appointment to be reviewed by a gastroenterologist since December 2015.

In light of the significant length of time Ms Y has been awaiting an appointment with a gastroenterologist, the Ombudsman recommends that the department follow-up with IHMS to ensure that Ms Y is allocated an appointment as soon as possible.

