

**ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN TO
THE MINISTER FOR IMMIGRATION AND BORDER PROTECTION**

Under s 486O of the Migration Act 1958

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

Name	Mr X (and wife)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1981	1982
Ombudsman ID	1002609-O	
Date of DIBP's reports	27 February 2017 and 29 August 2017	
Total days in detention	912 (at date of DIBP's latest report)	

Detention history

23 July 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.
10 September 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
17 April 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Melbourne Immigration Transit Accommodation (ITA).
28 April 2015	Transferred to Wickham Point APOD.
11 May 2016	Transferred to Melbourne ITA.
18 April 2017	Placed in the community. ²

Visa applications/case progression

<p>Mr X and Ms Y 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 Ms Y are barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of their method of arrival and transfer to an RPC.</p> <p>Mr X and Ms Y were returned to Australia from an RPC for medical treatment on 10 September 2013. The department has advised that under current policy settings Mr X and Ms Y 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>	
23 June 2016	The Minister declined to intervene under s 197AB to grant Mr X and Ms Y a community placement.
10 April 2017	The Minister intervened under s 197AB.

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

² Mr X and Ms Y were granted a placement in the community under s 197AB and remain in immigration detention.

29 August 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of Mr X and Ms Y while they remain temporarily in Australia for medical treatment.
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Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and engaged with a general practitioner (GP) for the management of sleeping difficulties, symptoms of depression and low mood.</p> <p>IHMS further advised that Mr X received treatment for a number of physical health conditions including gastrological concerns, a nicotine addiction, a bacterial stomach infection and abdominal pain. He was returned to Australia after it was identified that he required an endoscopy and colonoscopy which were performed in July 2015. He was diagnosed with irritable bowel syndrome in December 2015 and was reviewed by a specialist in October 2016.</p>

Ms Y

<p>IHMS advised that Ms Y engaged with the mental health team and a psychologist for the management of a personality disorder, anxiety, low weight concerns and a history of self-harm. She was prescribed with medication, was closely monitored regarding her decreasing weight and was advised that she would require hospitalisation if her weight fell below 40 kilograms. Upon placement in the community she was monitored by a GP and a psychiatrist, and it was noted that her weight continued to be of concern. In June 2017 she reported symptoms of depression and difficulty sleeping. She was prescribed with medication and continued to be supported by a GP while she awaited psychological review.</p> <p>IHMS further advised that Ms Y was provided with treatment for a blood condition and foot pain. She underwent surgery in September 2016 to treat a gynaecological concern, and attended specialist review in November 2016 and May 2017 and was prescribed with hormone medication.</p>
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Other matters

30 May 2016	The department was notified that Ms Y lodged a complaint with the Australian Human Rights Commission (AHRC). On 28 June 2016 the department provided a response. On 30 May 2016 the department received a conciliation request from the AHRC and on 26 June 2016 the department responded.
23 August 2016	The department was notified that Ms Y lodged a further complaint with the AHRC. On 4 May 2017 the department provided a response. The matter remained ongoing at the time of the department’s latest report.

Ombudsman assessment/recommendation

Mr 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 two and a half years.

Mr X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they 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 Determinations of Mr X and Ms Y while they remain temporarily in Australia for medical 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. IHMS has advised that Mr X and Ms Y have ongoing health concerns, and in particular Ms Y continues to be monitored for significant mental health concerns including anxiety, depression and low weight.

The Ombudsman notes that under current policy settings Mr 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 recommends that the department continue to prioritise the resolution of Mr X and Ms Y's immigration status.