

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Ms X who has remained in immigration detention for a cumulative period of more than 48 months (four years). The previous assessment 1002255-01 was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Ms X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1002255-02
Date of department's reports	8 June 2017 and 6 December 2017
Total days in detention	1,458 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X has continued to be 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 is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to a Regional Processing Centre (RPC) on completion of her treatment.	
19 January 2017	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Ms X a community placement. Her husband, Mr Y, was referred on the same ministerial submission for consideration under s 197AB and the Minister declined to intervene in Mr Y's case.
27 January 2017	Ms X, Mr Y and their son were relocated to an Alternative Place of Detention (APOD). The department advised that Mr Y continues to remain in immigration detention under s 189(1), while Ms X continues to be placed in the community and resides at the APOD with her husband under temporary arrangements.
10 February 2017	The Minister intervened under s 197AB to grant Ms X's son a community placement. The department advised that Ms X's son continued to reside at the APOD with his parents under temporary arrangements.

¹ On 29 December 2016 Ms X was relocated to a community placement address following the closure of Perth Immigration Residential Housing. She currently resides at an APOD under temporary arrangements and remains in immigration detention.

8 June 2017	<p>The department advised that the current living arrangements of Ms X and her family arise from recommendations by treating health professionals that the family reside in APOD arrangements while Ms X, supported by her husband, continues to access ongoing mental health care in the community.</p> <p>The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical treatment.</p>
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Other legal matters

8 June 2017	<p>The department advised that Ms X allegedly assaulted a Serco officer in August 2016. State police have issued an arrest warrant for Ms X in relation to these matters and the warrant will be executed if she returns to the relevant state.</p>
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X was regularly reviewed by a psychiatrist for multiple mental health concerns, including episodes of psychosis, borderline personality disorder and anxiety. IHMS reported that Ms X and her family were transferred to an APOD in the community following recommendations of treating health professionals that Ms X be placed in the community with the ongoing support of her husband and mental health services. A treating psychiatrist reported in July 2017 that Ms X had developed an anxiety disorder as a result of her and her family's immigration situation. The psychiatrist recommended that restrictions on Ms X and her family's movements be removed and that childcare arrangements be implemented to enable Ms X to have some child-free time.</p> <p>IHMS further advised that Ms X was monitored by a general practitioner (GP) for multiple physical health concerns, including a gynaecological condition, kidney stones, and back and elbow pain. She was monitored by a GP and paediatrician and received postnatal care following the birth of her son. She also attended physiotherapy and was prescribed with pain relief medication for the management of back and elbow pain. She was referred for further investigative testing and injection treatment if required.</p>	
23 January 2017	Gave birth to her son. ²
21 – 28 February 2017	Admitted to hospital for treatment of her son's physical health concerns.

Other matters

8 June 2017	<p>The department advised that the Australian Human Rights Commission closed Ms X's complaint on 12 April 2017 as she no longer wished to pursue the matter.</p>
<p>Ms X's husband, Mr Y, is reported on separately under s 486N due to differing immigration pathways and time spent in detention. He is the subject of Ombudsman assessment 1002413-O1.</p>	

² Ms X and her husband's son, Master Z, was born in Australia in January 2017 and detained on 27 January 2017. He has been in detention for less than two years and is not subject to reporting under s 486N. The department's 42-month report on Ms X's husband has advised that Master Z will take on the same immigration pathway as his father.

Ombudsman assessment/recommendation

Ms X was detained on 7 August 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than four years.

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 department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving Ms X's immigration status while noting Ms X's ongoing mental health concerns and advice from IHMS that her condition would likely deteriorate if she was separated from her husband.

On 14 June 2017 the Minister advised that under current legislation and policy settings, Ms X remains subject to return to an RPC on completion of her treatment.

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

The Ombudsman notes with serious concern the department's advice that Ms X remains on a different immigration pathway to her husband, Mr Y, and their son, Master Z, and the implications of the family's separate immigration pathways in the long-term.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose.

IHMS has advised that Ms X requires ongoing specialist treatment for multiple mental health concerns and that a treating psychiatrist reported that Ms X's mental health was being adversely affected by her and her family's immigration situation. The psychiatrist recommended that restrictions on Ms X and her family's movements be removed and that childcare arrangements be implemented to enable Ms X to have some child-free time.

The Ombudsman recommends that the department provide Ms X and her family with childcare support for the benefit of her mental health.