

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 Mr X, Ms Y and their family¹ who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002371-O1 was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1980	1981
Total days in detention	1,278 (at date of department's latest report)	1,278 (at date of department's latest report)

Family details

Family members	Master Z (son)	Miss P (daughter)
Citizenship	Country A	Country A, born in Australia
Year of birth	2013	2015
Total days in detention	1,278 (at date of department's latest report)	793 (at date of department's latest report)

Ombudsman ID	1002371-O2
Date of department's reports	16 August 2017 and 18 October 2017

Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community.²

Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings the family is not eligible to have their protection claims assessed in Australia and remains liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
18 October 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.

¹ This is the first s 486O assessment on Miss P who was detained on 17 August 2015 following her birth to parents in immigration detention. Miss P was initially reported on individually under s 486N on 16 August 2017 and is now reported on with her family as of their 42-month report, dated 18 October 2017. For the purpose of reporting under s 486N, her timeline in detention has been aligned with her family and they are reported on together.

² The family was granted a placement in the community under s 197AB and remains in immigration detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for foot pain related to a previous injury and was referred to an orthopaedic specialist in March 2017.

Ms Y

IHMS advised that Ms Y was prescribed with medication for gastric concerns and recurrent ear infections. She was referred to an ear, nose and throat specialist and an appointment was pending at the time of IHMS's report.

Master Z

IHMS advised that Master Z was reviewed by a paediatrician in August 2017 for behavioural concerns and post-traumatic stress disorder. During the consultation, Mr X reported that Master Z's behavioural issues had improved and he was sleeping, eating and learning well. He was subsequently discharged from the specialist paediatric clinic and continued to be monitored by a general practitioner.

IHMS further advised that Master Z was prescribed with medication for an ear infection and bronchitis.

Miss P

IHMS advised that Miss P received treatment for respiratory and bacterial infections and was referred to a paediatrician in August 2016 for behavioural concerns.

Other matters

18 October 2017	The department advised that the family's complaint with the Australian Human Rights Commission remained ongoing.
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Ombudsman assessment

Mr X, Ms Y and Master Z were detained on 26 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.

Mr X, Ms Y and Master Z were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 19 July 2013 the family remains 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 the family while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving the family's immigration status.

On 13 September 2017 the Minister advised that the department is supporting the government of Nauru to finalise the family's Refugee Status Determination while they remain in Australia.

The Ombudsman notes that under current policy settings the family is not eligible to have their protection claims assessed by Australia and that without an assessment of the family's 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 detention may pose.