

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 Mr X, Ms Y and their daughter who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1971	1986
Total days in detention	912 (at date of department's latest report)	913 (at date of department's latest report)

Family details

Family members	Miss Z (daughter)
Citizenship	Country A, born in Country B
Year of birth	2015
Total days in detention	788 (at date of department's latest report)

Ombudsman ID	1002684-O
Date of department's reports	24 May 2017, 26 September 2017 ¹ and 23 November 2017

Detention history

15 September 2013	Mr X and Ms Y were detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Facility C.
2 October 2013	Transferred to Nauru Regional Processing Centre (RPC). ²
18 October 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Facility D.
26 February 2015	The family was transferred to Facility E.
19 April 2015	Transferred to Facility F.
4 June 2015	Transferred to Nauru RPC.
January 2016	Ms Y and Miss Z were returned to Australia and re-detained under s 189(1). They were transferred to Facility G.
27 January 2016	Mr X was returned to Australia and re-detained under s 189(1). He was transferred to Facility G.
21 March 2016	The family was placed in the community. ³

¹ Miss Z was detained in February 2015 following her birth to parents in immigration detention. Miss Z was initially reported on individually under s 486N and is now reported on with her parents as of their 30 month report, dated 23 November 2017.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

³ The family was granted a placement in the community under s 197AB and remain in immigration detention.

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 Home Affairs (the department) has advised that the family is 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 18 October 2014. Miss Z was born in Australia in January 2015.</p> <p>Ms Y and Miss Z were returned to Australia for medical treatment in late January 2016 and Mr X was returned shortly after.</p> <p>The department has advised that under current policy settings the family is 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>	
16 March 2016	The Minister intervened under s 197AB to grant the family a community placement.
26 September 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.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and received specialist treatment for multiple complex mental health concerns, including an adjustment disorder, chronic stress disorder, post-traumatic stress disorder (PTSD), maladaptive behaviour and depression. He was diagnosed with an adjustment disorder in April 2015 and placed on Psychological Support Program observations after threatening to harm himself and his family due to the possibility of being returned to Nauru RPC. In June and July 2015 he was assessed as being at high risk of suicide and placed on Supportive Monitoring and Engagement observations after presenting as helpless and despondent in relation to the resolution of his family's immigration status.</p> <p>During a psychiatric review in July 2015 Mr X was diagnosed with PTSD in relation to his family's prolonged detention and pending return to Nauru RPC with a baby and his medication was adjusted. In August 2015 Mr X expressed that he did not wish to continue to engage with the mental health team (MHT) and his medication was ceased due to non-compliance. He was subsequently diagnosed with maladaptive behaviour disorder after presenting with sleep concerns, isolating behaviour and difficulties with managing his self-care.</p> <p>In December 2015 Mr X was diagnosed with depression in relation to his fear of Serco officers and reduced interaction with his family. On review, a psychiatrist noted that his depression was significantly impacting his sleep and memory and he was prescribed with medication. Mr X continued to be supported by a general practitioner (GP) in the community and attended psychological counselling. In September 2017 a psychiatrist noted that his anxiety and depression were caused by the uncertainty of his family's immigration status.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health concerns including gastric issues, and wrist and neck pain. In December 2014, Mr X was diagnosed with latent tuberculosis and was monitored as per state policy. Mr X has a long history of gastric issues and in May 2016 investigative testing identified an infection. He was reviewed by a gastroenterologist and prescribed with medication. Mr X attended physiotherapy for treatment of his wrist and neck pain in November 2014 and was referred to an orthopaedic specialist in March 2017 following ongoing concerns.</p>
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Ms Y

<p>IHMS advised that Ms Y received treatment for multiple mental health concerns, including PTSD and chronic stress disorder. She regularly attended counselling sessions after reporting bullying in relation to her nationality and associated feelings of isolation.</p> <p>IHMS reported that Ms Y required an intensive period of support from the MHT after experiencing trauma caused by being transferred to Nauru RPC with a young baby. During this period, Ms Y threatened suicide and expressed concerns for her daughter's wellbeing on Nauru RPC and experienced frequent panic attacks. She received daily support from the MHT and was prescribed with antidepressant medication after presenting with sleeping problems, persistent crying and feelings of hopelessness and helplessness.</p> <p>In January 2016 Ms Y was diagnosed with chronic stress disorder in relation to the pressure of being a carer for her husband and baby daughter. After being placed in the community, she was monitored by a GP and attended psychological counselling. She reported experiencing uncertainty about her current situation and ongoing concerns about her family's future. In June 2017 investigative testing indicated that she was suffering from post-natal depression.</p> <p>IHMS further advised that Ms Y received treatment for multiple physical health concerns including gynaecological concerns, a kidney infection and gastric reflux. She was identified as a tuberculosis contact in 2013 and monitored as per state policy.</p>	
January 2015	Gave birth to her daughter without complication.
17 April 2015 – 26 April 2015	Incident Reports recorded that Ms Y threatened self-harm on multiple occasions.
4 June 2015	An Incident Report recorded that Ms Y self-harmed after she was informed of her pending removal to Nauru RPC. Spontaneous use of force was required to prevent further self-harm.
7 October 2016	An Incident Report recorded that Ms Y required hospitalisation for treatment of pelvic pain.
May 2017	Gave birth to her son ⁴ without complication.

Miss Z

<p>IHMS advised that Miss Z received treatment for multiple physical health concerns, including a urinary tract infection and respiratory tract infection. In January 2016 Miss Z sustained an injury to her thigh and chest which required her to return to Australia for medical treatment. She was provided with wound care and pain relief medication and a treating doctor noted that her wounds were healing well.</p> <p>In May 2017 Miss Z's parents reported that she was displaying behavioural concerns following the birth of her brother. The GP noted that community health staff were attending the family's home on a weekly basis and the family continued to be supported.</p>	
18 September 2016	An Incident Report recorded that Miss Z attended hospital for treatment of vomiting and coughing.

⁴ Master P was born in Australia in May 2017 and detained on the same day. He has been in detention for less than two years and is not subject to reporting under s 486N.

Other matters

21 May 2015	The department was notified that Mr X and Ms Y lodged a complaint with the Australian Human Rights Commission. The department provided multiple responses and the matter was finalised on 12 May 2016.
Early 2016	The family filed proceedings in the High Court seeking an injunction preventing their removal from Australia. The department advised that the matter was set aside until the department decides to progress the family's return to Nauru RPC.

Ombudsman assessment

Mr X and Ms Y were detained on 15 September 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 on 18 October 2014. Miss Z was born in Australia in January 2015.

The family was again transferred to an RPC on 4 June 2015. Ms Y and Miss Z were returned to Australia for medical treatment in late January 2016 and Mr X was returned shortly after.

The department advised that because the family 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 the family while they remain temporarily in Australia for medical treatment.

The Ombudsman notes with concern that the family's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.

The Ombudsman notes IHMS's advice that Mr X was diagnosed with an adjustment disorder and PTSD in relation to his prolonged detention and the family's pending return to Nauru RPC. In September 2017 a psychiatrist noted that his anxiety and depression was caused by the uncertainty of his family's immigration status.

The Ombudsman notes IHMS's advice that Ms Y received treatment for PTSD and chronic stress disorder related to the uncertainty of her family's immigration status and pending return to Nauru RPC. Ms Y also required an intensive period of support from the MHT after experiencing trauma caused by being returned to Nauru with a young baby.

The Ombudsman further notes with concern that it appears likely that the family will remain in detention for a prolonged and uncertain period while they receive medical treatment. The Ombudsman further notes the government's duty of care to detainees and the serious risk to mental and physical health posed by a prolonged and uncertain period of detention.