

ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O assessment on Mr X and his family who have remained in immigration detention for a cumulative period of more than 36 months (three years).

The first assessment 1002386-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1983

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	1986	2011

Ombudsman ID	1002386-O1
Date of DIBP's reviews	29 October 2016 and 1 May 2017
Total days in detention	1,096 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002386-O), the family¹ has remained in community detention.

Recent visa applications/case progression

The Department of Immigration and Border Protection (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 a Regional Processing Centre (RPC) on completion of Ms Y's medical treatment.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple physical health concerns, including back pain, sinusitis and thyroid concerns. He was prescribed with medication and was awaiting an appointment with an ear nose and throat specialist.

IHMS further advised that Mr X disclosed a history of torture and trauma and attended specialist counselling.

¹ Mr X and Ms Y's second child, Master P, was born in Australia in May 2015 and detained on 20 May 2015. He is the subject of Ombudsman assessment 1002678-O

Ms Y

IHMS advised that Ms Y received treatment for multiple mental health concerns including post-traumatic stress disorder, anxiety, depression and an adjustment disorder. In December 2016, a treating counsellor noted that the possibility of the family being returned to Nauru RPC was having a negative impact on Ms Y's confidence and ability to care for her children. IHMS advised that Ms Y and Mr X were provided with parenting support to help them manage their son's behavioural concerns. Ms Y's condition was monitored by a general practitioner and she continued to attend specialist counselling.

IHMS further advised that Ms Y received treatment for gynaecological concerns and knee pain.

Master Z

IHMS advised that Master Z attended specialist counselling for the treatment of multiple behavioural concerns, including attention deficit hyperactivity disorder and sleep issues. He was prescribed with medication and referred to a sleeping specialist and paediatrician. In July 2016 a specialist counsellor noted that Master Z's behaviour was affected by his mother's mental health concerns and in September 2016 a paediatrician reported that his behavioural problems were exacerbated by his lack of contact with other children in restricted detention.

IHMS further advised that Master Z underwent a surgical procedure to remove several teeth due to cavities and was referred to a dietician for growth concerns.

12 May 2016

An Incident Report recorded that child welfare authorities were notified following child supervision concerns. Master Z was referred for specialist counselling and no further action was required.

Ombudsman assessment/recommendation

Mr X and his family were detained on 18 August 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than three years with no processing of their protection claims.

The family was transferred to an RPC and returned to Australia for medical treatment. 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 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 further notes with concern advice from IHMS that Ms Y's confidence and ability to care for her children is negatively affected by the possibility that the family may be returned to Nauru RPC.

The Ombudsman notes that under current policy settings the family is not eligible to have their protection claims assessed in Australia and that without an assessment of their claims it appears likely they will remain in detention indefinitely.

The Ombudsman again recommends that priority is given to resolving the family's immigration status.