

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 daughters who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

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| Name | Mr X (and family) |
| Citizenship | Country A |
| Year of birth | 1974 |
| Total days in detention | 874 (at date of DIBP's latest review) |

Family details

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|--------------------------------|---------------------------------------|
| Family members | Ms Y (wife) |
| Citizenship | Country A |
| Year of birth | 1975 |
| Total days in detention | 912 (at date of DIBP's latest review) |

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|--------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| Family members | Miss Z (daughter) | Miss P (daughter) | Miss Q (daughter) |
| Citizenship | Country A | Country A | Country A |
| Year of birth | 1997 | 2000 | 2003 |
| Total days in detention | 874 (at date of DIBP's latest review) | 874 (at date of DIBP's latest review) | 912 (at date of DIBP's latest review) |

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| Ombudsman ID | 1002549-O |
| Date of DIBP's reviews | 5 December 2016, 10 January 2017 and 3 June 2017 ¹ |

Detention history

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| 6 December 2013 | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 9 December 2013 | Transferred to Nauru Regional Processing Centre (RPC). ² |
| 22 January 2014 | Ms Y and Miss Q were returned to Australia and re-detained under s 189(1). They were transferred to Brisbane Immigration Transit Accommodation (ITA). Mr X, Miss Z and Miss P remained at Nauru RPC. |
| 27 February 2014 | Ms Y and Miss Q were transferred to Berrimah House APOD. |

¹ The department advised that the family was previously reported on in separate 24-month reviews as the total days in detention for Mr X and his two daughters, Miss Z and Miss P, differ from those of his wife, Ms Y, and their daughter, Miss Q. The family was reported on together in their 30-month review.

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

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| 28 February 2014 | Ms Y and Miss Q were transferred back to Nauru RPC and reunited with their family the following day. |
| 13 August 2014 | The family was returned to Australia and re-detained under s 189(1). They were transferred to Brisbane ITA. |
| 21 August 2014 | Transferred to Wickham Point APOD. |
| 23 August 2014 | Transferred to Nauru RPC. |
| 24 January 2015 | Returned to Australia and re-detained under s 189(1). They were transferred to Brisbane ITA the following day. |
| 13 February 2015 | Transferred to Blaydin APOD. |
| 26 February 2015 | Transferred to Wickham Point APOD. |
| 14 December 2015 | Transferred to community detention. |

Recent visa applications/case progression

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| <p>Mr X, Ms Y and their daughters 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 the family is barred under ss 46A and 46B from lodging a valid protection visa application as a result of their method of arrival and transfer to an RPC.</p> <p>Ms Y and Miss Q were returned to Australia for Miss Q's medical treatment on 22 January 2014 and were transferred back to Nauru RPC on 28 February 2014. The family was also returned to Australia on 13 August 2014 for Miss Q's medical treatment and transferred back to Nauru RPC on 23 August 2014.</p> <p>The family was returned again to Australia on 24 January 2015 for Miss Q's medical treatment.</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 remains liable for transfer back to an RPC on completion of their treatment.</p> | |
| 1 December 2015 | The Minister intervened under s 197AB to allow the family to reside in community detention. |
| 5 December 2016 | The department advised that Ms Y and Miss Q may be affected by the unintentional release of personal information. ³ |
| 3 June 2017 | The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of the family while they remain temporarily in Australia for medical treatment. |

³ In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X presented with symptoms of claustrophobia and post-traumatic stress disorder (PTSD), including rumination, concerns for his safety and constant hypervigilance. In January 2017 a psychologist noted that Mr X continued to suffer the emotional effects of being exposed to heightened levels of stress and fear over a prolonged period of time. The psychologist further noted that he was fearful about being returned to an RPC and the potential impact on his wife and daughter's health. He was prescribed with antidepressant medication and continued to be monitored by a general practitioner (GP) and psychologist.

IHMS further advised that Mr X attended physiotherapy and received specialist treatment for multiple physical health concerns, including neck pain, cervical osteoarthritis and a chronic tendon injury. He presented with increased levels of neck and back pain on 3 March 2016 and was referred for investigative testing.

Ms Y

IHMS advised that Ms Y was prescribed with antidepressant medication and attended ongoing counselling for the management of depression and a history of torture and trauma. In February 2016 she was referred for psychological support after presenting with depressive symptoms and flashbacks. In February 2017 a psychologist strongly advised that Ms Y and her family are not psychologically fit for return to an RPC.

IHMS further advised that that prior to her arrival in Australia, Ms Y underwent surgery to remove one of her kidneys following recurrent kidney stones. Investigative testing has identified further kidney stones in her remaining kidney and she continued to be monitored by a GP and kidney specialist.

Ms Y also received treatment for additional physical health concerns, including eye and gynaecological concerns, and was awaiting a dermatology and gynaecological review at the time of IHMS's latest report.

Miss Z

IHMS advised that Miss Z attended psychological counselling for the management of anxiety, depression and an adjustment disorder related to her journey to Australia and events while in detention at Nauru RPC. In May 2017 IHMS advised that a treating psychologist reported that Miss Z had been psychologically impacted by her time at Nauru RPC and the thought of returning caused her intense emotional distress. The psychologist recommended that she not be returned to an RPC as her mental health would decline.

IHMS further advised that Miss Z was diagnosed with a cardiac condition and underwent investigative testing in February 2015 following a fainting episode. She was awaiting a cardiology assessment at the time of IHMS's latest report.

15 April 2015

An Incident Report recorded that Miss Z was transported to hospital via ambulance following a panic attack.

Miss P

IHMS advised that Miss P attended psychological counselling for the management of multiple mental health concerns, including depression, anxiety and a history of torture and trauma. A psychologist reported that she had safety concerns and fears of being returned to an RPC. In May 2016 the psychologist advised that she required ongoing psychological support and it was not in her best interests to be returned to an RPC. Her mental health was monitored by a GP and in April 2017 improvements in her mood were noted.

IHMS further advised that Miss P received treatment for multiple physical health concerns, including vision impairment, abdominal pain and gynaecological concerns. She was reviewed by an ophthalmologist on 4 October 2016 who recommended that she be monitored for further eye concerns. She continued to be monitored by a GP and was awaiting reviews with an ophthalmologist and gynaecologist at the time of IHMS's latest report.

Miss Q

IHMS advised that Miss Q received specialist treatment for complex physical health concerns, including a chronic kidney disease and associated complications. In February 2014 she was returned to Australia to have one of her kidneys surgically removed and has been admitted to hospital on multiple occasions for investigation of concerns related to her kidney condition, including abdominal pain and nosebleeds. IHMS further reported that Miss Q lost vision in one eye as a result of kidney failure and was provided with prescription glasses.

IHMS advised that Miss Q and her family were transferred to community detention as she requires long-term monitoring and access to specialist services to maintain adequate kidney functioning. Her condition continued to be monitored by a multidisciplinary team, including a nephrologist, urologist and paediatrician.

IHMS further advised that Miss Q attended counselling for the management of an adjustment disorder and a history of torture and trauma. She was referred for psychological counselling after presenting with low mood, isolating behaviours and disturbed sleep. In February 2017 a psychologist reported that she was traumatised by her prolonged detention and medical experiences over recent years. The psychologist further reported that she experiences symptoms of PTSD and fears being returned to an RPC because of her medical vulnerability.

29 January 2014 and
31 January 2015

Incident Reports recorded that Miss Q was transported to hospital via ambulance.

Other matters

The department advised that Mr X's nephew, Mr R, arrived in Australia in August 2013 and was transferred to Nauru RPC in June 2014.

Ombudsman assessment/recommendation

Mr X, Ms Y and their daughters were detained on 6 December 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years.

The family was transferred to an RPC and returned to Australia for Miss Q's 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 Miss Q's treatment.

The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of the family while they remain temporarily in Australia for medical treatment.

The Ombudsman notes the advice from IHMS that Miss Q has a medical condition that requires ongoing specialist 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 the family requires ongoing psychological support for mental health concerns and trauma related to their experiences at Nauru RPC. The Ombudsman notes with serious concern that multiple psychologists have advised that the family is not psychologically fit for return to an RPC.

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