

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 and Ms Y and their children 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 (mother)
Citizenship	Country A	Country A
Year of birth	1984	1987
Total days in detention	912 (at date of DIBP's latest report)	912 (at date of DIBP's latest report)

Family details

Family members	Master Z (son)	Miss P (daughter)	Master Q (son) ¹
Citizenship	Country A	Country A	Country A, born in Australia
Year of birth	2005	2007	2015
Total days in detention	912 (at date of DIBP's latest report)	912 (at date of DIBP's latest report)	799 (at date of DIBP's latest report)

Ombudsman ID	1002604-O
Date of DIBP's reports	20 February 2017 and 20 August 2017

Detention history

27 July 2014	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to Curtin Immigration Detention Centre.
1 August 2014	Transferred to Nauru Regional Processing Centre (RPC). ²
25 February 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Brisbane Immigration Transit Accommodation.
12 March 2015	Transferred to Wickham Point Alternative Place of Detention.
23 February 2016	Granted a community placement. ³

¹ Master Q was born in Australia in May 2015 and was subject to an individual assessment under s 486N. He was previously reported on in Ombudsman assessment 2000014-O and is now included in his family's assessment.

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 remains in immigration detention.

Visa applications/case progression

<p>The family arrived in Australia by sea after 19 July 2013 and was 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 in Australia as a result of their method of arrival and transfer to an RPC.</p> <p>The family was returned to Australia from an RPC for medical treatment on 25 February 2015.</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>	
28 January 2016	The Minister intervened under s 197AB to grant the family a community placement.
20 August 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.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling for the management of a history of torture and trauma, depression and post-traumatic stress disorder (PTSD). Following review in March 2016, IHMS advised that Mr X experienced flashbacks, sleeping difficulties, nightmares, low mood, anger and frustration. Following his placement in the community, he reported ongoing stress and anxiety related to his immigration status and was prescribed with antidepressant medication.</p>

Ms Y

<p>IHMS advised that Ms Y was confirmed to be pregnant in October 2014. During her pregnancy Ms Y received treatment for abdominal ligament pain, vitamin deficiencies and pregnancy-related illness. Following the child's birth, Ms Y reported experiencing lower back pain which was diagnosed as related to poor posture from holding her baby. Ms Y was referred for an x-ray which identified cartilage injury and she was advised to complete strengthening exercises. She also received treatment and was monitored for chest pain concerns.</p> <p>IHMS further advised that Ms Y received specialist counselling and engaged with the mental health team for the management of a history of torture and trauma and a mixed anxiety and depressive disorder. IHMS reported that Ms Y experienced nightmares and other trauma-related symptoms and that she feared for her family's safety if they were returned to Country A.</p>	
May 2015	Gave birth to her son without complication.
8 December 2015	An Incident Report recorded that Ms Y self-harmed and was admitted to hospital.

Master Z

IHMS advised that Master Z engaged with counselling for the management of anxiety and a history of torture and trauma. Following psychological reviews in January 2016, Master Z disclosed that he was experiencing nightmares, sleep difficulties, low appetite, heart palpitations and difficulties concentrating at school. In February 2016 a psychiatrist recommended that Master Z and his family be granted a community placement due to the negative mental health effects he would experience if he remained in an immigration detention facility.

IHMS further advised that Master Z was prescribed with medication for the treatment of a parasitic infection and a chest infection.

Miss P

IHMS advised that Miss P engaged with specialist counselling for the management of a history of torture and trauma. Following review in November 2016, a psychologist advised that Miss P demonstrated symptoms consistent with anxiety and PTSD and recommended ongoing counselling. In June 2016, a psychiatrist recommended that the family be provided with a permanent refugee and residency status to alleviate their mental health concerns.

Master Q

IHMS advised that Master Q underwent surgery for urinary concerns in June 2017. Following discharge from hospital, Master Q was frequently reviewed and was treated for a fever. An appointment for post-operative review with a surgeon was scheduled for August 2017 and was pending at the time of IHMS's latest report.

Ombudsman assessment/recommendation

The family was detained on 27 July 2014 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 two and a half years.

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 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 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 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.