

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O assessment on Mr X, Ms Y and their daughter who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002391-O was tabled in Parliament on 10 May 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1980	1986

Family details

Family members	Miss Z (daughter)
Citizenship	Country A
Year of birth	2009

Ombudsman ID	1002391-O1
Date of DIBP's reports	4 May 2017 and 1 November 2017
Total days in detention	1,276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community. ¹

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 remains liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
25 May 2017	The Minister intervened under s 197AD of the <i>Migration Act 1958</i> to vary the family's residential address.
1 November 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 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 be prescribed with antidepressant medication and engage with specialist counselling for the management of depression and a history of torture and trauma. In a review in June 2017 it was noted that Mr X displayed symptoms of clinical depression including a sense of hopelessness, despair, loss of interest and disruption to his appetite and sleep. He also presented with concerns about his wife's deteriorating mental health. There was no further information available at the time of IHMS's latest report.

Ms Y

IHMS advised that Ms Y continued to be prescribed with antidepressant medication and engaged with specialist counselling for the management of multiple complex mental health concerns including a major depressive disorder, post-traumatic stress disorder (PTSD) and anger management issues. In March 2017 a psychologist advised that Ms Y demonstrated deteriorating psychological symptoms and in May 2017 a general practitioner (GP) noted that she only left their house for appointments. Ms Y accepted a referral to a psychiatrist who advised that she was disengaged from previous support. She reported experiencing low mood, insomnia and suicidal ideation with no intent. Treating clinicians recommended that Ms Y and her family be placed in City B to be closer to family and social supports and an IHMS Medical Director advised that an offshore placement was clinically inappropriate for Ms Y due to her mental health conditions. Following the variation of the family's residence Ms Y continued to be monitored by a GP with referrals for psychiatric and specialist counselling.

IHMS further advised that Ms Y was referred for a spinal x-ray and prescribed with medication following chest and abdominal pain.

Miss Z

IHMS advised that Miss Z continued to engage with specialist counselling and was prescribed with antidepressant medication for the management of multiple complex mental health concerns including a severe anxiety disorder, PTSD and a history of torture and trauma. In reviews in April and June 2017, Miss Z reported experiencing nightmares, an inability to sleep alone and difficulties separating from her parents to go to school. A psychiatrist noted that due to their own mental health concerns, her parents often did not have the emotional energy to support Miss Z in her own trauma. A specialist counsellor advised that placement in an immigration detention facility would be significantly harmful to the family and ongoing counselling was recommended.

IHMS further advised that Miss Z underwent surgery to remove her tonsils in March 2017.

Ombudsman assessment/recommendation

The family was detained on 26 July 2013 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 three 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 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 while noting ongoing mental health concerns. The Ombudsman also recommended that the department expedite consideration of the family's request to be closer to their support networks.

On 10 May 2017 the Minister noted the recommendation and advised that under current legislation and policy settings, the family remains subject to return to an RPC on completion of their treatment. The Minister further advised that the department was preparing a submission under s 197AD regarding the variation of the family's residential status.

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. An IHMS Medical Director has advised that it would be clinically inappropriate for Ms Y to be placed in an RPC due to her mental health conditions and a specialist counsellor advised that placement in an immigration detention facility would be significantly harmful to the family.

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 the department continue to prioritise the resolution of the family's immigration status.