

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 son 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	1982	1981
Total days in detention	912 (at date of DIBP's latest report)	

Family details

Family members	Master Z (son)
Citizenship	Country A, born in Australia
Year of birth	2015
Total days in detention	796 (at date of DIBP's latest report)

Ombudsman ID	1002666-O
Date of DIBP's reports	9 May 2017, 6 September 2017 ¹ and 7 November 2017

Detention history

23 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. Mr X and Ms Y were transferred to Christmas Island Immigration Detention Centre.
10 September 2013	Transferred to Nauru Regional Processing Centre (RPC). ²
28 June 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Brisbane Immigration Transit Accommodation.
29 June 2015	Transferred to Wickham Point Alternative Place of Detention.
23 March 2016	The family was placed in the community. ³

¹ Master Z was detained on 3 September 2015 following his birth to parents in immigration detention. Master Z was initially reported on individually under s 486N and is now reported on with his family as of their 30-month report, dated 7 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 remains 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 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 Mr X and Ms Y's 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 28 June 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>	
3 March 2016	The Minister intervened under s 197AB to grant the family a community placement.
7 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.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X disclosed a history of trauma in July 2015 and attended specialist counselling. He also engaged with the mental health team (MHT) while he remained in an immigration detention facility.</p> <p>IHMS further advised that Mr X was identified as a tuberculosis contact in October 2014 and attended investigative testing, with no concerns reported.</p>

Ms Y

<p>IHMS advised that Ms Y received treatment for multiple complex mental health concerns including depression, anxiety and a history of domestic abuse. In September 2015 Ms Y was reviewed by a psychiatrist and diagnosed with post-natal depression after presenting with symptoms of hopelessness and despair. She was prescribed with medication and regularly engaged with the MHT and a women's support group.</p> <p>Following the family's placement in the community, Ms Y attended counselling and a psychiatrist noted that she presented with anxiety, poor sleep, social withdrawal and low self-esteem. In March 2017 a psychiatrist noted that she had chronic low mood with passive suicidality and a specialist counsellor advised that she was presenting with symptoms of post-traumatic stress disorder and major depression. The specialist counsellor also reported that returning, or the threat of being returned, to Nauru would be highly re-traumatising and any perceived threat to her ability to protect her son would result in further deterioration to her mental health.</p> <p>During psychiatric reviews in May and June 2017 Ms Y reported that the intensity of her suicidal thoughts had decreased, however in July 2017 she advised that her mood was low. She was prescribed with psychotropic medication and provided with education. Her condition continued to be monitored by a general practitioner, psychiatrist and specialist counsellor.</p> <p>IHMS further advised that Ms Y received treatment for hypothyroidism, a thigh lesion, and post-natal concerns.</p>	
August 2015	Gave birth to her son.
10 February 2016	An Incident Report recorded that Ms Y threatened self-harm.

Master Z

IHMS advised that Master Z was reviewed by an ear, nose and throat specialist and underwent investigative testing for throat and breathing concerns. He was subsequently reviewed by a paediatrician who advised that Master Z may have a minor throat condition, however it was not causing any concerns. In a follow-up review the paediatrician noted that Master Z was thriving and the condition was likely to self-resolve.

Detention incidents

Early 2016	IHMS made a mandatory report that Ms Y had possibly been exposed to domestic violence. The matter was referred to the police and Ms Y advised that she did not require police assistance and would make a report if necessary. The matter was finalised by the police with no further action taken.
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Ombudsman assessment/recommendation

The family was detained on 23 July 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. The department advised that because Mr X and Ms Y arrived after 19 July 2013 the family remains 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 the government’s duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose. A specialist counsellor advised that returning, or the threat of being returned, to Nauru would be highly re-traumatising to Ms Y.

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.