

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 Ms X and her son, Mr Y, who have remained in immigration detention for a cumulative period of more than 36 months (three years). The previous assessment 1002528-O was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X (and son)	Mr Y (son)
Citizenship	Country A	Country B, born in Country A
Year of birth	1969	1999

Ombudsman ID	1002528-O1
Date of department's report	11 October 2017
Total days in detention	1,094 (at date of department's report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X and Mr Y have continued to be placed in the community.¹

Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings Ms X and Mr Y are 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 their treatment.

11 October 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X and Mr Y while they remain temporarily in Australia for medical treatment.
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Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that Ms X has a history of mental health concerns and intermittently engaged with a psychologist during this assessment period. A treating general practitioner noted that she was depressed and anxious and presented with nightmares and flashbacks related to possible post-traumatic stress disorder (PTSD). She also continued to take prescribed antidepressant medication.

IHMS further advised that Ms X received treatment for multiple physical health concerns, including lower back, hip and knee pain. She was previously referred to an orthopaedic specialist following a review with a neurosurgeon, however IHMS advised that she was unable to attend the appointment as she was placed in the community interstate.

¹ Ms X and Mr Y were granted a placement in the community under s 197AB of the *Migration Act 1958* and remain in immigration detention.

Mr Y

IHMS advised that Mr Y did not receive treatment for any mental or physical health concerns during this assessment period.

Other matters

Ms X's husband and Mr Y's father, Mr Z, is an Australian citizen. The department advised that Ms X and Mr Y are estranged from Mr Z.

Ombudsman assessment/recommendation

Ms X and Mr Y were detained on 19 August 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 three years.

Ms X and Mr Y were transferred to an RPC and returned to Australia for medical treatment on 17 April 2015. The department advised that because Ms X and Mr Y 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 Ms X and Mr Y while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving Ms X and Mr Y's immigration status.

On 13 September 2017 the Minister advised that Ms X and Mr Y had been temporarily transferred to Australia for medical treatment and the department was supporting the relevant offshore government to finalise their Refugee Status Determinations while they remain in Australia.

The Ombudsman notes with concern that Ms X and Mr Y's return to an RPC is likely to be protracted due to Ms X's ongoing mental and physical health concerns.

The Ombudsman notes IHMS's advice that Ms X continued to receive treatment for complex mental health concerns, including possible PTSD. IHMS also advised that Ms X was previously referred to an orthopaedic specialist following a review with a neurosurgeon, however she was unable to attend the appointment as she was placed in the community interstate.

The Ombudsman notes with concern that it appears likely that Ms X and Mr Y will remain in detention for a prolonged and uncertain period while Ms X receives medical treatment. The Ombudsman further notes the government's duty of care to detainees and the serious risk to mental and physical health posed by a prolonged and uncertain period of detention.

Given IHMS's advice, the Ombudsman recommends that the department follow up with IHMS to determine whether Ms X requires a new referral for an appointment with an orthopaedic specialist in accordance with the neurosurgeon's recommendation.