

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 who has remained in immigration detention for a cumulative period of more than three and a half years. The previous assessment 1002471-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
Citizenship	Country A
Year of birth	1959
Ombudsman ID	1002471-O1
Date of department's reports	11 August 2017 and 9 February 2018
Total days in detention	1,276 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X has continued to be placed in the community.¹ Ms X resides in the community with her daughter Ms Y who was returned to Australia in September 2014 to assist with the care of her mother and is the subject of Ombudsman assessment 1002482-O1.

Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to a Regional Processing Centre (RPC) on completion of her treatment.

11 August 2017 and
9 February 2018

The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical treatment.

¹ Ms X and Ms Y were granted a placement in the community under s 197AB and remain in immigration detention.

Health and welfare

International Health and Medical Services (IHMS) advised that Ms X continued to receive treatment for the management of chronic pain related to joint deterioration. In October 2017 she underwent investigative testing which found symptoms of a degenerative condition in her hip and spine. Ms X was monitored by a general practitioner and attended specialist reviews with an occupational therapist, physiotherapist and podiatrist as required.

IHMS further advised that Ms X was prescribed with medication and attended specialist counselling for the management of multiple complex mental health concerns. In December 2016 a psychiatrist advised that Ms X's mental health concerns would be resolved if she was reunified with her son and daughter who remain in Nauru. The psychiatrist also advised that Ms X's mental state would improve if her community placement was varied so that she could reside further away from Facility B. Treating psychologists reported that Ms X continued to present with ongoing distress surrounding her long-term separation from her children who remain in Nauru and her placement in a separate residence from her husband.

Other matters

The department advised that Ms X's daughter, Ms Z, and son, Mr P, arrived in Australia with Ms X and Ms Y. They remain in Nauru and are not subject to reporting under s 486N.

Ms X's husband is a permanent resident of Australia and resides in close proximity to Ms X and Ms Y.

Ombudsman assessment/recommendation

Ms X was detained in December 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.

Ms X was transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.

The department further advised that it is supporting the Government of Nauru to finalise the Refugee Status Determination of Ms X while she remains temporarily in Australia for medical treatment.

Noting the adverse impact of the family's separation on their mental health, the Ombudsman's previous assessment strongly recommended that the department explore options to reunify Ms X and her children and that priority be given to resolving Ms X and her family's immigration status.

On 13 September 2017 the Minister advised that he had varied Ms X's community placement address to enable her to have better access to family support and medical treatment. The Minister further advised that under current legislation and policy settings, Ms X remains subject to return to an RPC on completion of her treatment.

Ms X's return to an RPC, and thus Ms X's reunification with her family who remain in Nauru, is likely to be protracted due to her ongoing mental and physical health concerns.

IHMS has advised that Ms X requires ongoing care and treatment for chronic pain, as well as for complex mental health concerns. Treating counsellors reported that Ms X experiences ongoing distress surrounding her long-term separation from her children who remain in Nauru and her placement in a separate residence from her husband, and recommended that Ms X's mental state would improve if she was reunified with her children.

It appears likely that Ms X will remain in detention for a prolonged and uncertain period while she receives medical treatment, posing a serious risk to her mental and physical health.

Due to current legislation and policy settings, families have been separated following the temporary return of family members to Australia for medical conditions that require ongoing and apparently indefinite treatment.

The Ombudsman again strongly recommends that the department explore options to reunify Ms X and her children who remain in Nauru.