

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 and his wife Ms Y who have remained in immigration detention for a cumulative period of more than 36 months (three) years

The first assessment 1002334-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

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|----------------------|-------------------|
| Name | Mr X (and family) |
| Citizenship | Country A |
| Year of birth | 1979 |

Family details

| | |
|-----------------------|-------------|
| Family members | Ms Y (wife) |
| Citizenship | Country A |
| Year of birth | 1986 |

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|--------------------------------|---|
| Ombudsman ID | 1002334-O1 |
| Date of DIBP's reviews | 4 September 2016 and 5 March 2017 |
| Total days in detention | 1,094 (at date of DIBP's latest review) |

Recent detention history

Since the Ombudsman's previous assessment (1002334-O), the family¹ has remained in community detention.

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 remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X's general practitioner continued to manage a medical condition for which he had surgery in January 2016. He also received treatment for other physical health conditions including urological matters, neck and back pain, and lower back pain. IHMS advised in its latest report that it had not yet received a report from an urologist consultation or documentation to confirm whether Mr X had attended a procedure where he would receive a cortisone injection to relieve the neck and back pain.

¹ Mr X and Ms Y's son Master Z was born in Australia in May 2015 and detained on 18 June 2015. At the date of the department's latest review he had been in detention for less than two years and was not subject to review under s 486N.

Ms Y

IHMS advised that Ms Y reported increased stress and poor sleep for which she commenced psychological counselling and was referred to community health services.

She also received treatment for physical health concerns including dyspepsia and gynaecological matters for which she was prescribed pain relief medication. At the date of IHMS's latest report she was awaiting a referral for review of a gastroenterological matter with a surgeon. She was also awaiting a pelvic ultrasound.

Recent detention incidents

24 February 2017

An Incident Report recorded a notification from welfare authorities that Mr X and Ms Y allegedly had an argument which resulted in Ms Y and the couple's son leaving the designated community detention property and moving into an emergency property. Ms Y and her son subsequently returned to the designated property as there was said to be no significant risk.

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 23 July 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than three years with no processing of their protection claims.

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 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that Mr X and Ms Y have medical conditions that require ongoing 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 in Australia and that without an assessment of the family's claims it appears likely they will remain in detention indefinitely.

The Ombudsman again recommends that priority is given to resolving the family's immigration status.