

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

The first assessment 1002394-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1982

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1990

Ombudsman ID	1002394-O1
Date of DIBP's reviews	5 November 2016 and 8 May 2017
Total days in detention	1,094 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002394-O), Mr X, Ms Y and their daughter¹ have 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.	
5 November 2016	The department advised that Mr X was a plaintiff in proceedings in the High Court. These proceedings were finalised following the resolution of the M68/2015 ² case.

¹ Miss Z was born in Australia in December 2015 and detained on 23 December 2015. She has been in detention for less than two years and is not subject to review under s 486N.

² *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2016] HCA 1.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for depression and anxiety. In June 2016 he presented with increased symptoms of anxiety and a general practitioner (GP) advised that his mental health would improve if he was transferred to Sydney where he has family support. Mr X was prescribed with medication and his mental health continued to be monitored by a GP.

IHMS further advised that Mr X was prescribed with medication for hypothyroidism and migraines and referred to a dermatologist after being diagnosed with alopecia. His condition was monitored by a GP.

Ms Y

IHMS advised that Ms Y was previously diagnosed with a heart condition and continued to be monitored by a GP and cardiologist. She was awaiting a cardiology review at the time of IHMS's latest report.

IHMS further advised that Ms Y attended counselling and was prescribed with medication for depression and anxiety. Her mental health was monitored by a GP as required.

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 10 August 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.

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 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 further notes advice from a GP that Mr X's mental health would improve if he was relocated to Sydney where he has family support. In light of these concerns, the Ombudsman recommends that consideration be given to varying the family's community detention placement to enable them to reside closer to their family support network.

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.