

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 mother who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002392-O was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X (and mother)
Citizenship	Country A
Year of birth	1992

Family details

Family members	Ms Y (mother)
Citizenship	Country A
Year of birth	1969

Ombudsman ID	1002392-O1
Date of DIBP's reports	3 May 2017 and 1 November 2017
Total days in detention	1,276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X and her mother remained at Facility B.	
16 December 2016	Placed in the community. ¹

Recent visa applications/case progression

The Department of Immigration and Border Protection (the department) has advised that under current policy settings Ms X and her mother 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.	
12 December 2016	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to grant Ms X and her mother a community placement.
1 November 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of Ms X and her mother while they remain temporarily in Australia for medical treatment.

Other legal matters

27 and 28 April 2017	Ms X was allegedly a victim of sexual assault and was summoned to give evidence before a magistrates court.
----------------------	---

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

Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that since being placed in the community, Ms X attended specialist counselling for ongoing mental health concerns, including anxiety and panic attacks, depression, post-traumatic stress disorder (PTSD), and a history of torture and trauma. In May 2017 a psychologist reported that Ms X displayed severe symptoms of PTSD and dysphoria related to her reported experiences of sexual assault at Nauru RPC and Facility B, including hypervigilance, intrusive memories, dissociative episodes that manifested as dizziness and fainting, intense fear and mistrust of men, disturbed sleep and nightmares. The psychologist advised that Ms X's psychological functioning continued to be adversely affected by her prolonged detention and that she required a safe and stable environment to recover from her traumatic experiences. The psychologist recommended that Ms X would benefit from being reunified with her father and brother, who could assist her with caring for her mother. She was prescribed with antidepressant medication and continued to be monitored by a general practitioner (GP).

IHMS further advised that Ms X was monitored by a GP for multiple physical health concerns, including chronic neck pain, underweight concerns, gastroenterological issues, and heart palpitations associated with anxiety. She underwent investigative testing and was prescribed with medication for benign lumps and associated pain, and was scheduled to attend a follow-up appointment to discuss their surgical removal. Ms X was awaiting appointments with a cardiologist, physiotherapist, gastroenterologist, haematologist and a woman's health clinic at the time of IHMS's latest report.

Ms Y

IHMS advised that since being placed in the community, Ms Y attended specialist counselling for the management of ongoing mental health concerns, including PTSD, anxiety and major depression. She was referred to a psychiatrist for review in February 2017 after presenting to a GP with panic attacks and nightmares. In May 2017 Ms Y reported experiencing visual and auditory hallucinations. She was prescribed with medication and continued to be monitored by a GP and psychiatrist.

IHMS further advised that Ms Y received treatment for multiple physical health concerns, including chronic back and neck pain, epigastric issues, osteoporosis and chest pain associated with anxiety. She was prescribed with medication and attended specialist reviews as required. Ms Y continued to be monitored by a GP and was awaiting an appointment with an osteoporosis clinic at the time of IHMS's latest report.

Other matters

The department advised that Ms X's father, Mr Z, and brother, Mr P, arrived in Australia with Ms X and her mother. They are located at Nauru RPC and are not subject to reporting under s 486N.

On 3 May 2017 the department advised that Ms X and her mother were informed that her father and brother had been found to be refugees by the government of Nauru.

Ombudsman assessment/recommendation

Ms X and her mother were detained on 7 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 and a half years.

Ms X and her mother were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and her mother arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of Ms X and her mother while they remain temporarily in Australia for medical treatment. The department further advised that Ms X's father and brother have been found to be refugees by the government of Nauru.

The Ombudsman's previous assessment recommended that Ms X and her mother's referral to the Minister for consideration of a community placement be expedited and that priority be given to resolving Ms X and her mother's immigration status. The Ombudsman further recommended that options for reunifying the family be prioritised.

On 14 June 2017 the Minister noted the recommendations and advised that he had intervened under s 197AB to allow Ms X and her mother to be placed in the community. The Minister further advised that under current legislation and policy settings, Ms X and her mother remain subject to return 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 notes with serious concern that Ms X and her mother have remained in detention for a significant length of time and that IHMS has advised that Ms X and her mother's separation from their family who remain at Nauru RPC is adversely affecting their mental health. Treating mental health professionals have recommended that Ms X and her mother be reunified with their family.

However IHMS has advised that Ms X and her mother require ongoing treatment for complex mental health concerns, including PTSD, anxiety, panic attacks and depression. Given these concerns and the trauma associated with Ms X's experiences at Nauru RPC, it appears unlikely that Ms X and her mother's mental health will sufficiently improve to enable return to Nauru RPC to be reunified with their family in the foreseeable future.

1. The Ombudsman recommends that the department address and resolve complex cases such as Ms X and her mother's, in which, due to current legislation and policy settings, families have been separated following the temporary return of family members to Australia for medical concerns that require ongoing and apparently indefinite treatment.

The Ombudsman notes that under current policy settings Ms X and her mother are not eligible to have their protection claims assessed by Australia and that without an assessment of Ms X and her mother's claims it appears likely they will remain in detention for a prolonged period.

2. The Ombudsman recommends that the department continue to prioritise the resolution of Ms X and her mother's immigration status.