

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Ms X and her son, Mr Y, who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X (and son)	Mr Y (son)
Citizenship	Country A	Country A
Year of birth	1974	1998

Ombudsman ID	1002720-O
Date of department's reports	25 July 2017 and 23 January 2018
Total days in detention	912 (at date of department's latest report)

Detention history

19 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention, Christmas Island.
7 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
14 January 2016	Returned to Australia and re-detained under s 189(1). They were transferred to Facility B.
17 January 2016	Transferred to Facility C.
10 March 2016	Placed in the community. ²

Visa applications/case progression

<p>Ms X and Mr Y arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Home Affairs (the department) has advised that Ms X and Mr Y are barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of their method of arrival and transfer to an RPC.</p> <p>Ms X and Mr Y were returned to Australia from an RPC for medical treatment on 14 January 2016.</p> <p>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 an RPC on completion of Ms X's treatment.</p>	
3 March 2016	The Minister intervened under s 197AB to grant Ms X and Mr Y a community placement.
23 January 2018	The department advised that Ms X and Mr Y have been found to be refugees by the government of Nauru.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

² Ms X and Mr Y 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 Ms X received treatment for multiple complex mental health concerns, including a history of torture and trauma, thoughts of suicide, and depression. Ms X was placed on Psychological Support Program (PSP) observations in August 2014 after she threatened suicide in relation to being allegedly assaulted by another detainee. It was reported that her mood and mental health deteriorated and in September 2014 she reported experiencing auditory hallucinations and thoughts of self-harm. She was prescribed with antidepressant medication and referred to a psychiatrist for review. In May 2015 Ms X was diagnosed with depression and situational stress related to the trauma of her alleged assault and fear of the perpetrator if she was released into the community in Nauru. She was subsequently placed on a safety plan by IHMS and stakeholders in Australia and Nauru. Following her placement in the community in Australia, Ms X attended psychological counselling and continued to be monitored by a general practitioner (GP).

IHMS further advised that Ms X was identified as a tuberculosis (TB) contact in 2013 and monitored as per state policy with no further review required.

15 January 2014	An Incident Report recorded that Ms X refused food and fluid.
5 September 2014	IHMS advised that Ms X refused food and fluid.
25 November 2016	An Incident Report recorded that Ms X threatened self-harm.
18 February 2017	An Incident Report recorded that Ms X was admitted to hospital to undergo surgery for stomach issues.

Mr Y

IHMS advised that Mr Y was monitored for multiple incidents of self-harm related to his detention situation, separation from his family and concern for his mother. He was placed on PSP and Supportive Monitoring and Engagement observations following an act of protest and multiple occasions of self-harm while at Nauru RPC and an immigration detention facility. He engaged with the mental health team for psychological support during this time. Following his placement in the community, Mr Y did not attend his scheduled appointments with a psychologist. His mental health continued to be monitored by a GP and no further incidents of self-harm had been reported at the time of IHMS's latest review.

IHMS further advised that Mr Y was identified as a TB contact in 2013 and monitored as per state policy with no further review required.

25 February 2016	An Incident Report recorded that Mr Y self-harmed.
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Other matters

31 December 2014	The department was notified that Ms X lodged a complaint with the Australian Human Rights Commission. The matter was closed on 28 July 2015.
The department advised that Ms X and Mr Y are placed in the community with Ms X's nephew, Mr Z, who is the subject of Ombudsman assessment 1002572-O1.	

Ombudsman assessment

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 two and a half years.

Ms X and Mr Y were transferred to an RPC and returned to Australia for medical treatment. 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.

Ms X and Mr Y have been found to be refugees by the government of Nauru.

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 health concerns.

IHMS has advised that while at Nauru RPC and an immigration detention facility, Ms X and Mr Y required close monitoring for complex mental health concerns and multiple incidents of self-harm. IHMS further advised that Ms X's mental health deteriorated after she was allegedly assaulted by another detainee at Nauru RPC.

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, posing a serious risk to their mental and physical health.