

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the first s 486O report on Ms X and her stepdaughter, Miss 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 stepdaughter)
Citizenship	Country A
Year of birth	1979

Family details

Family members	Miss Y (stepdaughter)
Citizenship	Country A
Year of birth	2005

Ombudsman ID	1002489-O
Date of DIBP's reports	2 September 2016 and 3 March 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

6 December 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 869 <i>Ardmore</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
9 December 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
6 September 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
9 September 2014	Transferred to Sydney Immigration Residential Housing.
22 June 2015	Transferred to community detention.
The Department of Immigration and Border Protection (the department) advised that Ms X and Miss Y currently reside in community detention with Ms X's husband and Miss Y's father, Mr Z. Mr Z arrived in Australia by sea on 16 May 2013 and resides in the community on a Bridging visa.	

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.

Visa applications/case progression

<p>Ms X and Miss Y arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The department has advised that Ms X and Miss Y are barred under ss 46A and 46B from lodging a valid protection visa application as a result of their method of arrival and transfer to an RPC.</p> <p>Ms X and Miss Y were returned to Australia for medical treatment on 6 September 2014.</p> <p>The department has advised that under current policy settings Ms X and Miss Y are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.</p>	
4 June 2015	The Minister intervened under s 197AB to allow Ms X and Miss Y to reside in community detention.
19 January 2016	The Minister intervened under s 197AD and varied Ms X and Miss Y's residential address to allow them to reside with Mr Z.

Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X received treatment and attended counselling for management of multiple complex mental health concerns, including depression, anxiety, chronic stress and a history of self-harm. In April 2014 she disclosed a history a history of trauma related to her marriage, separation from her children in her homeland and separation from her husband in Australia.</p> <p>Ms X was reviewed by a psychiatrist and placed on Supportive Monitoring and Engagement (SME) observations in March and June 2014 following incidents of suicidal ideation and self-harm. Her condition continued to be monitored by a general practitioner (GP) and psychologist.</p> <p>IHMS further advised that Ms X received treatment for multiple physical health concerns, including chronic headaches, abdominal pain and a benign cyst.</p>
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Miss Y

<p>IHMS advised that Miss Y was returned to Australia for medical treatment following a deterioration in her mental health at Nauru RPC related to her separation from her father. Following psychiatric and psychological review, she was diagnosed with post-traumatic stress disorder and depression.</p> <p>Miss Y was placed on SME observations in February and May 2015 following incidents of suicidal ideation and risk of self-harm. A treating psychiatrist advised that she was experiencing chronic stress and recommended she be reunited with her father in community detention. The psychiatrist further advised that she not be returned to Nauru RPC due to the risk of deteriorating mental health.</p> <p>In January 2017 IHMS advised that Miss Y's mental health had improved in community detention and she continued to be monitored by a GP.</p>

Other matters

10 June 2014	The Australian Human Rights Commission notified the department of a complaint by Mr Z on behalf of himself, Ms X and Miss Y. The department provided a response on two occasions and on 20 October 2014 the matter was finalised.
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Ombudsman assessment/recommendation

Ms X and Miss Y were detained on 6 December 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years.

Ms X and Miss Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and Miss Y 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 notes with concern advice from IHMS that Miss Y's mental health may deteriorate if she is returned to an RPC and separated from her father.

The Ombudsman notes that under current policy settings Ms X and Miss Y are not eligible to have their protection claims assessed in Australia and that without an assessment of Ms X and Miss Y's claims it appears likely they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving Ms X and Miss Y's immigration status.