

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 Mr X, Ms Y and their daughter who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Stateless, born in Country A	Stateless, born in Country B
Year of birth	1977	1977

Family details

Family members	Miss Z (daughter)
Citizenship	Stateless, born in Country A
Year of birth	2008

Ombudsman ID	1002552-O
Date of DIBP's reviews	7 December 2016 and 7 June 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

24 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
10 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 May 2015	Returned to Australia and re-detained under s 189(1). Transferred to Wickham Point APOD.
2 March 2016	Transferred to community detention.

Visa applications/case progression

<p>The family arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that the family is 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>The family was returned to Australia for medical treatment on 27 May 2015.</p> <p>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 an RPC on completion of Ms Y's treatment.</p>	
23 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

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.

7 June 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.
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Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for minor concerns including high blood pressure and cholesterol and back and knee pain. He also attended specialist reviews on multiple occasions for the management of gastric concerns and associated pain. He was referred to a gastroenterology clinic for a surgical procedure in October 2016 and at the time of IHMS's latest report an appointment remained pending. He continued to be monitored by a general practitioner (GP) for the management of this condition.</p> <p>IHMS further advised that Mr X reported distress and fear in relation to his family's situation. He engaged with the mental health team while placed in an immigration detention facility with no further concerns recorded following the family's transfer to community detention.</p>

Ms Y

<p>IHMS advised that Ms Y received treatment for an eye condition and was advised that she may require surgical intervention at a later date if the condition worsened. Ms Y reported ongoing back and gastric pain, and following a number of tests, gallstones and a stomach infection were identified. She was prescribed with medication and continued to be monitored by a GP.</p> <p>Ms Y also received treatment and support for complications during pregnancy. Following a miscarriage in 2014, Ms Y gave birth to her daughter² without complication. Ms Y was again confirmed to be pregnant in July 2016, however a number of abnormalities were identified. Ms Y gave birth to her son in January 2017, and the child died six days later.</p> <p>Following the death of her child, Ms Y attended post-natal counselling and was prescribed with medication for depression. She was referred to a psychologist for further review and support.</p>	
14 August 2015	An Incident Report recorded that Ms Y was admitted to hospital and gave birth to her daughter the following day without complication.
2 January 2017	An Incident Report recorded that Ms Y was admitted to hospital for further observation regarding her pregnancy.

Miss Z

<p>IHMS advised that Miss Z received treatment for dental concerns and abdominal pain. Ms Y further advised that Miss Z was experiencing nightmares, however no further concerns were recorded following the family's transfer to community detention.</p>
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Detention incidents

25 November 2015	An Incident Report recorded that Mr X allegedly threatened another detainee and the matter was referred to the police.
15 December 2016	An Incident Report recorded that Ms Y alleged that Mr X had assaulted her in the presence of their daughter.

² Miss P was born in Australia in August 2015 and detained in August 2015. At the time of drafting this assessment, she had been in detention for less than two years and was not subject to reporting under s 486N.

Ombudsman assessment/recommendation

The family was detained on 24 July 2013 after arriving in Australia by sea and has been held in detention for a cumulative period of more than two years and a half years.

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 Ms Y's treatment.

The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical 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 by Australia and that without an assessment of the family's claims it appears likely they will remain in detention for a prolonged period.

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