

# 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, Ms Y and their son<sup>1</sup> who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002393-O was tabled in Parliament on 10 May 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

<b>Name</b>	Mr X (and family)	Ms Y (wife)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1984	1986
<b>Total days in detention</b>	1,276 (at date of DIBP's latest report)	

## Family details

<b>Family members</b>	Master Z (son)
<b>Citizenship</b>	Country A, born in Australia
<b>Year of birth</b>	2015
<b>Total days in detention</b>	1,008 (at date of DIBP's latest report)

<b>Ombudsman ID</b>	1002393-O1
<b>Date of DIBP's reports</b>	5 May 2017 and 3 November 2017

## Recent detention history

Since the Ombudsman's previous assessment, the family <sup>2</sup> has continued to be placed in the community. <sup>3</sup>
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## 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 remains liable for transfer back to a Regional Processing Centre (RPC) on completion of Ms Y's treatment.	
3 November 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.

<sup>1</sup> Master Z was born in Australia in 2015 and was subject to an individual assessment under s 486N. He was previously reported on in Ombudsman assessment 1002586-O and is now included in his family's assessment.

<sup>2</sup> Mr X and Ms Y's second son, Master P, was born in Australia in July 2016 and detained on 12 October 2016. He has been in detention for less than two years and is not subject to assessment under s 486N.

<sup>3</sup> The family was granted a placement in the community under s 197AB and remains in immigration detention.

## Health and welfare

### *Mr X*

International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling and reported that he continued to experience feelings of uncertainty, helplessness and fear regarding his immigration circumstances. He declined to attend further counselling, but has engaged with community supports and activities to manage his mental health concerns.

### *Ms Y*

IHMS advised that Ms Y continued to attend psychiatric and specialist counselling for the management of major depression and post-traumatic stress disorder. In January 2017 Ms Y advised that she had ceased taking her prescribed medication during a review with a psychiatrist. The psychiatrist noted that her mental health had deteriorated and she agreed to recommence her medication. During a further psychiatric review in August 2017, Ms Y presented with high levels of stress, nightmares and apprehension. The psychiatrist discussed treatment options, including admission to hospital, and her medication was adjusted.

IHMS further advised that Ms Y underwent investigative testing and was prescribed with medication for knee inflammation and pain.

### *Master Z*

IHMS advised that Master Z did not receive treatment for any major physical or mental health issues during this assessment period.

### **Ombudsman assessment/recommendation**

Mr X and Ms Y were detained on 11 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.

Mr X and Ms Y were transferred to an RPC and returned to Australia for medical treatment on 18 October 2014. The department advised that because Mr X and Ms Y arrived after 19 July 2013, the family remains 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's previous assessments recommended that priority be given to resolving Mr X, Ms Y and Master Z's immigration status.

On 10 May 2017 the Minister advised that under current legislation and policy settings, Mr X and Ms Y remain subject to return to an RPC on completion of their treatment.

On 29 November 2017 the Minister advised that the department is supporting the relevant government to finalise Master Z and his family's Refugee Status Determination while they remain in Australia.

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 the department continue to prioritise the resolution of the family's immigration status.