

## 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 who has remained in immigration detention for a cumulative period of more than 24 months (two years).

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1992
<b>Ombudsman ID</b>	1002789-O
<b>Date of department's report</b>	23 October 2017
<b>Total days in detention</b>	731 (at date of department's report)

### Detention history

21 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. She was transferred to an Alternative Place of Detention, Christmas Island.
October 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
October 2015	Returned to Australia and re-detained under s 189(1). She was transferred to Facility B.
12 October 2015	Transferred to Facility C.
October 2015	Transferred to Nauru RPC.
October 2015	Returned to Australia and re-detained under s 189(1). She was transferred to Facility B.
15 April 2016	Placed in the community. <sup>2</sup>

### Visa applications/case progression

<p>Ms X arrived in Australia by sea after 19 July 2013 and was transferred to an RPC. The Department of Home Affairs (the department) has advised that Ms X is barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of her method of arrival and transfer to an RPC.</p> <p>Ms X was returned to Australia from an RPC for medical treatment in two occasions in October 2015.</p> <p>The department has advised that under current policy settings Ms X is not eligible to have her protection claims assessed in Australia and remains liable for transfer back to an RPC on completion of her treatment.</p>	
4 November 2014	The government of Nauru finalised the Refugee Status Determination of Ms X and found her to be a refugee.
14 April 2016	The Minister intervened under s 197AB to grant Ms X a community placement.

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

<sup>2</sup> Ms X was granted a placement in the community under s 197AB and remains in immigration detention.

## Health and welfare

International Health and Medical Services (IHMS) advised that Ms X was confirmed to be pregnant in August 2015 while at Nauru RPC. Ms X disclosed that she had been sexually assaulted and requested a termination of pregnancy. She also disclosed that she did not report the incident at the time due to feelings of shame and lack of trust in police. IHMS noted that Ms X was at risk of deteriorating mental health and distress related to the pregnancy and recommended that she be returned to Australia to undergo a termination.

Ms X was returned to Australia in October 2015 and reviewed at a family planning clinic before being transferred to Nauru RPC.

Ms X was again returned to Australia in late October 2015 and admitted to a psychiatric hospital for the management of a depressive disorder, situational crisis and post-traumatic stress disorder (PTSD). She was reviewed by an obstetrician in November 2015 and advised that she no longer wished to proceed with the termination. Ms X was discharged from the psychiatric hospital on 14 December 2015 and treating medical professionals recommended that she be permitted to remain in Australia during her pregnancy due to the likely deterioration of her mental health. She was regularly reviewed by a psychiatrist for ongoing monitoring and gave birth to her son<sup>3</sup> in April 2016.

Following her placement in the community, Ms X was regularly reviewed by a psychiatrist for psychotherapy and monitoring. In February 2017 the psychiatrist advised that Ms X would benefit from being relocated to Sydney as she would have greater psychosocial support. In April and May 2017 she was diagnosed with depression and PTSD and referred for specialist counselling.

IHMS further advised that Ms X also received treatment for chronic back pain.

October 2015 – 14 December 2015	Admitted to a psychiatric hospital.
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## Detention incidents

6 September 2017	IHMS advised that Ms X disclosed that she was sexually assaulted and IHMS staff reported the matter to the appropriate authorities.
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## Other matters

Ms X's son, Master Y, has lodged an application for Australian citizenship.
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<sup>3</sup> Master Y was born in Australia in April 2016. He has been in detention for less than two years and is not subject to reporting under s 486N.

### **Ombudsman assessment/recommendation**

Ms X was detained on 21 October 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two years.

Ms X was transferred to an RPC and returned to Australia for medical treatment on two occasions in October 2015. The department advised that because Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.

Ms X was found to be a refugee by the government of Nauru on 4 November 2014.

The Ombudsman notes that Ms X's return to an RPC is likely to be protracted due to her ongoing mental and physical health concerns.

The Ombudsman notes IHMS's advice that Ms X was admitted to a psychiatric hospital for a six week period and received treatment for PTSD and depression. IHMS also reported that Ms X would benefit from being relocated to Sydney as she would have greater psychosocial support.

The Ombudsman notes with concern that it appears likely that Ms X will remain in detention for a prolonged and uncertain period while she receives medical treatment. The Ombudsman further notes the government's duty of care to detainees and the serious risk to mental and physical health posed by a prolonged and uncertain period of detention.

In light of IHMS's advice, the Ombudsman recommends that the department consider relocating Ms X to a community placement address in Sydney for the benefit of her mental health.