

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TBLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O assessment on Ms X and her daughter who have remained in immigration detention for a cumulative period of more than three and a half years. The previous assessment 1002484-O was tabled in Parliament on 6 September 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

<b>Name</b>	Ms X (and daughter)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1978

### Family details

<b>Name</b>	Miss Y (daughter)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	2009

<b>Ombudsman ID</b>	1002484-O1
<b>Date of department's reports</b>	25 August 2017 and 19 March 2018
<b>Total days in detention</b>	1,277 (at date of department's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, Ms X and her daughter have continued to be placed in the community.<sup>1</sup> Ms X's husband and Miss Y's father, Mr Z, continues to reside with them at the same residential address.

### Recent visa applications/case progression

The Department of Home Affairs (the department) has advised that under current policy settings Ms X and her daughter are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.	
August 2017 and March 2018	The department advised that it is supporting the Government of Nauru to finalise the Refugee Status Determination of Ms X and her daughter while they remain temporarily in Australia for medical treatment.
March 2017	Ms X and her daughter's requests for ministerial intervention under ss 46A, 46B and 198AE of the <i>Migration Act 1958</i> for consideration to be exempted from transfer to an RPC and to lift the bar to allow them to lodge a temporary visa application were finalised without referral to the Minister.

<sup>1</sup> Ms X and her daughter 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 continued to receive treatment for multiple complex mental health concerns. She was prescribed with medication and attended ongoing psychological counselling and psychiatric reviews. A treating psychologist reported that Ms X's mental state was being severely exacerbated by her inability to support her family while in detention and her ongoing fear of family separation if she and her daughter were returned to Nauru or transferred to a third country upon the completion of their Refugee Status Determination. The psychologist further recommended that ongoing financial pressures on the family be addressed as they were adversely affecting Ms X's mental health. The psychologist reported that the department and other service providers were exploring available financial supports for the family. The psychologist further recommended that the family continues to reside together as this was critical for Ms X's mental health.

IHMS further advised that Ms X continued to be monitored by a general practitioner for chronic pain. She attended physiotherapy for the management of her symptoms and underwent a magnetic resonance imaging scan.

### *Miss Y*

IHMS advised that Miss Y continued to attend specialist counselling for the management of multiple mental health concerns. A counsellor reported that since her placement in the community with her mother and father, Miss Y's mental health had improved but she continued to experience symptoms of separation anxiety and nightmares. The counsellor reported that Miss Y would continue to be at risk of these symptoms while her future remains uncertain. A treating psychologist recommended that Miss Y and her family continue to reside together as this was critical for the family's mental health.

IHMS further advised that Miss Y received treatment for physical health conditions which were thought to be related to her mental health concerns.

## Other matters

April 2018	<p>The Office of the Commonwealth Ombudsman requested further information from the department concerning advice from IHMS that the department and other service providers were exploring available financial supports for the family due to the reported impact on Ms X's mental health.</p> <p>In May 2018 the department advised that it had consulted with stakeholders regarding the matter and that it was awaiting further information from Ms X in order to assess the family's financial situation.</p>
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## Ombudsman assessment

Ms X and her daughter were detained in July 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.

Ms X and her daughter were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and her daughter arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving Ms X and her daughter's immigration status while noting ongoing mental health concerns.

On 6 September 2017 the Minister advised that the department is supporting the Government of Nauru to finalise the Refugee Status Determination of Ms X and her daughter while they remain temporarily in Australia for medical treatment.

Ms X and her daughter's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.

IHMS has advised that Ms X and her daughter required ongoing specialist treatment for complex mental health conditions. It was reported that Ms X's mental health was being adversely affected by an ongoing fear of being returned to Nauru and having her family separated. A psychologist reported that Miss Y would continue to be at risk of mental health symptoms while her future remains uncertain. The psychologist recommended that the family continues to reside together as this was critical for their mental health.

IHMS further advised that Ms X's mental health was being adversely affected by financial pressures and in May 2018 the department advised that it had consulted with stakeholders regarding the matter and that it was awaiting further information in order to assess the family's financial situation.

It appears likely that Ms X and her daughter will remain in detention for a prolonged and uncertain period while they receive medical treatment, posing a serious risk to their mental and physical health.