

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 daughter who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002423-O was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1981	1981

Family details

Family members	Miss Z (daughter)
Citizenship	Country A
Year of birth	2009

Ombudsman ID	1002423-O1
Date of department's reports	2 June 2017 and 1 December 2017
Total days in detention	1,276 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community.¹

Recent visa applications/case progression

The Department of Home Affairs (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 their treatment.	
2 June 2017 and 1 December 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.

¹ The family was granted a placement in the community under s 197AB of the *Migration Act 1958* and remains in immigration detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X engaged with a psychiatrist and attended specialist counselling for the management of symptoms of major depressive disorder and post-traumatic stress disorder, including low mood, loss of interest, difficulty concentrating and disturbed sleep. He expressed stress regarding his family's future, particularly regarding the possibility of a transfer to the United States of America (USA). IHMS further advised that Mr X declined to continue to attend specialist counselling as a result of his regular counsellor no longer being available. He continued to be supported by a general practitioner (GP).

Mr X did not report any physical health concerns during this assessment period and continued to be monitored as required.

Ms Y

IHMS advised that Ms Y continued to engage with a psychologist, psychiatrist and GP for the management of her significant mental health concerns including major depression and anxiety. Ms Y's mental state was exacerbated by the death of her newborn son in February 2016 and her symptoms were worsened by her social isolation and uncertain immigration status. Ms Y experienced further destabilisation in her mental health after being advised that her family may be relocated to the USA. Ms Y was prescribed with medication however her mood remained low upon psychiatric consultation in July, August and September 2017.

IHMS further advised that Ms Y reported abdominal pain in July 2016 and was diagnosed with a mild liver disease. She was awaiting an appointment for a colonoscopy and continued to be monitored by a GP.

4 August 2017	An Incident Report recorded that Ms Y was transferred to hospital by ambulance due to severe dizziness.
7 November 2017	An Incident Report recorded that Ms Y was transferred to hospital by ambulance after expressing suicidal ideation.

Miss Z

IHMS advised that Miss Z engaged with specialist counselling for mental health support to manage flashbacks associated with Nauru RPC, anxiety, aggressive tendencies, loss of interest, disturbed sleep, poor appetite and weight loss. IHMS advised that ongoing concerns about the possibility of being returned to Nauru continue to trigger and exacerbate her symptoms. A psychologist reported in May 2017 that Miss Z had shown improvement in her self-regulation but advised that she would benefit from ongoing trauma supportive counselling.

IHMS further advised that Miss Z attended an ultrasound in March 2017 that identified multiple kidney cysts. She was referred to a specialist hospital and continued to be monitored while she awaits an appointment.

Ombudsman assessment

Mr X, Ms Y and their daughter were detained on 19 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.

The family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their 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 assessment recommended that priority be given to resolving the family's immigration status while noting that Ms Y's treating psychiatrists had reported that her mental health was highly likely to deteriorate should she be returned to an RPC.

On 14 June 2017 the Minister advised that under current legislation and policy settings, the family remains subject to return to an RPC on completion of their treatment.

The Ombudsman notes with concern that the family's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.

The Ombudsman notes IHMS's advice that Ms Y and Miss Z have ongoing mental health concerns that are exacerbated by the possibility of being returned to Nauru. Additionally, they continue to await appointments for treatment of physical health concerns.

The Ombudsman further notes with concern that it appears likely that the family will remain in detention for a prolonged and uncertain period while they receive 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.