

## 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 children who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002330-O was tabled in Parliament on 15 February 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>	1972	1980

### Family details

<b>Family members</b>	Master Z (son)	Master P (son)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	2000	2005

<b>Ombudsman ID</b>	1002330-O1
<b>Date of DIBP's reports</b>	27 February 2017 and 28 August 2017
<b>Total days in detention</b>	1,276 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community. <sup>1</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 their treatment.	
28 August 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of the family while they remain temporarily in Australia for medical treatment.

### Health and welfare

#### *Mr X*

International Health and Medical Services (IHMS) advised that Mr X received treatment for a lumbar disc prolapse concern and continued to await review of a cataract with the referral pending at the time of IHMS's report.
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<sup>1</sup> The family was granted a placement in the community under s 197AB and remains in immigration detention.

*Ms Y*

IHMS advised that Ms Y was monitored by a general practitioner (GP) and specialists as required for gynaecological concerns and neck, back and shoulder pain.

IHMS further advised that Ms Y continued to attend counselling for the management of symptoms of depression and anxiety. In December 2016 Ms Y was provided with support from a GP to manage distress associated with the possibility of having to return to Nauru RPC to be assessed for resettlement in the United States of America.

*Master Z and Master P*

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

### **Ombudsman assessment/recommendation**

The family was detained on 24 July 2013 after arriving in Australia by sea and has been held in 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 Determinations 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.

On 15 February 2017 the Minister noted the recommendation and 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 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 their 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.