

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Ms X and her daughter who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X (and daughter)
Citizenship	Country A
Year of birth	1967

Family details

Family members	Ms Y (daughter)
Citizenship	Country A
Year of birth	1992

Ombudsman ID	1002418-O
Date of DIBP's reports	27 May 2016 and 25 November 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

23 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 802 <i>Coalburg</i> . Ms X and Ms Y were transferred to an Alternative Place of Detention (APOD), Christmas Island.
25 July 2013	Transferred to Christmas Island Immigration Detention Centre.
30 July 2013	Transferred to Christmas Island APOD.
10 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
15 November 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
11 May 2016	Transferred to Facility B.

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

Visa applications/case progression

Ms X and Ms Y arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Immigration and Border Protection (the department) has advised that they are barred under ss 46A and 46B of the *Migration Act 1958* from lodging valid protection visa applications as a result of their method of arrival and transfer to an RPC.

Ms X and Ms Y were returned to Australia for medical treatment on 15 November 2014.

The department has advised that under current policy settings they are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.

Other legal matters

27 May 2016	The department advised that Ms Y was a plaintiff in ongoing court proceedings.
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Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that Ms X received treatment for mental health conditions including a history of torture and trauma, depression, anxiety, obsessive compulsive disorder, panic attacks and situational stress. She was prescribed with antidepressant medication and referred for specialist counselling. At times she engaged in food and fluid refusal and since mid-2016 she has declined counselling as she felt it could not help her. An IHMS psychologist commented in April 2016 that detention continued to aggravate and prolong Ms X's anxiety and somatic symptoms.

IHMS further advised that Ms X received treatment for multiple physical health conditions including gastric reflux and other gastroenterological matters, chronic sciatica and spinal degeneration, shoulder pain, high cholesterol, heart palpitations, low blood pressure, non-cardiac chest pains and deteriorating vision due to corneal scarring.

Ms Y

IHMS advised that Ms Y received treatment and counselling for mental health concerns including depression, anxiety, thoughts of self-harm, suicidal ideation and sleep disturbances. She disclosed past trauma on account of events witnessed on Nauru and attended specialist counselling for this.

IHMS further advised that Ms Y received treatment for physical health concerns including skin issues, back and bilateral knee pain, gastric issues, intermittent breast pain and iron deficiency. She was referred for review by a gastroenterologist in December 2015 and was still awaiting allocation of an appointment at the time of the department's most recent review.

23 June 2016	An Incident Report recorded unplanned use of force to stop Ms Y from harming herself.
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Other matters

15 June 2015	The Australian Human Rights Commission notified the department that it was investigating a complaint from Ms Y. On 24 August 2015 the department provided a response. The matter remained ongoing at the date of the department's latest review.
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19 August 2015	The Ombudsman's office received a complaint on behalf of Ms Y, alleging that she had been regularly sexually harassed at Nauru RPC and on one occasion sexually assaulted by a guard. The complaint was closed as it was out of jurisdiction.
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Ombudsman assessment/recommendation

Ms X and Ms Y were detained on 23 July 2013 after arriving in Australia by sea and have been held in restricted detention for a cumulative period of more than two and a half years with no processing of their protection claims.

Ms X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 13 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes the advice from IHMS that both Ms X and Ms Y have medical conditions that require ongoing 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 Ms X and Ms Y are not eligible to have their protection claims assessed in Australia and that without an assessment of their claims it appears likely they will remain in restricted detention indefinitely.

The Ombudsman strongly recommends that Ms X and Ms Y be considered for community detention placements.

The Ombudsman further recommends that priority be given to resolving their immigration status.