

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 son¹ who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002331-O was tabled in Parliament on 1 March 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	1982	1992
Total days in detention	1,276 (at date of DIBP's latest report)	

Family details

Family members	Master Z (son)
Citizenship	Country A, born in Australia
Year of birth	2015
Total days in detention	908 (at date of DIBP's latest report)

Ombudsman ID	1002331-O1
Date of DIBP's reports	27 February 2017 and 27 August 2017

Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community. ²

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 Ms Y's treatment.	
27 February 2017	The department advised that Mr X and Ms Y's request for ministerial intervention, dated 5 February 2016, under s 198AE of the <i>Migration Act 1958</i> for exemption from transfer to an RPC remained ongoing.
27 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.

¹ Master Z was born in Australia in February 2015 and was subject to an individual assessment under s 486N. He was previously reported on in Ombudsman assessment 1002612-O and is now included in his family's assessment.

² The family was granted a placement in the community under s 197AB and remains in immigration detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X has an extensive history of mental health concerns which have improved following his placement in the community. Mr X engaged with support groups and attended counselling for substance abuse concerns and continued to be monitored by a general practitioner (GP) as required.

Ms Y

IHMS advised that Ms Y has a history of depression and self-harm, and frequently engaged with counselling to manage symptoms of anxiety, low mood, stress, suicidal ideation, and appetite concerns. Ms Y reported that she was concerned about her capacity to care for her son due to her low mood and fatigue. Ms Y also reported intrusive thoughts associated with her experiences at Nauru RPC and it was recommended by a specialist counselling service that she be provided with further specialised mental health supports, childcare services and peer support services.

IHMS further advised that Ms Y was confirmed to be pregnant on 27 May 2017. Ms Y reported symptoms of morning sickness and advised that she had ceased taking her prescribed antidepressant medication. IHMS noted that Ms Y was unable to attend scheduled counselling sessions in May and June 2017 due to her pregnancy related illness and continued to be monitored by a GP.

Master Z

IHMS advised that Master Z was reviewed by a paediatrician in November 2016 for the management of issues with his temper, feeding and sleep. The paediatrician advised that Master Z's sleep and temper issues were likely to be a reflection of his parent's mental health concerns. He was referred to a child mental health service, but was unable to attend following relocation of the family. A second referral was initiated by a GP in March 2017, with an appointment pending at the time of IHMS's report.

Ombudsman assessment/recommendation

The family was detained on 6 August 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 the family arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of Ms Y's 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 priority be given to exploring options to enable the resolution Mr X and Ms Y's immigration status.

On 1 March 2017 the Minister noted the recommendation and advised that under current legislation and policy settings, they remain 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. IHMS advised that Ms Y continued to present with symptoms of depression and anxiety and reported concerns about her capacity to care for her son. IHMS further advised that it had been recommended by a specialist counselling service that Ms Y be provided with further specialised mental health supports, childcare services and peer support services.

1. In light of these concerns, the Ombudsman recommends that the department and IHMS explore further options to provide Ms Y with additional support services to manage her symptoms and her concerns regarding her capacity to care for her son, especially in the context of her pregnancy.

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 the family's claims it appears likely they will remain in detention for a prolonged period.

2. The Ombudsman recommends that the department continue to prioritise the resolution of the family's immigration status.