

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 Ms X and her daughter Ms Y who have remained in immigration detention for a cumulative period of more than three and a half years. The previous assessment 1002494-O was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X (and daughter)
Citizenship	Country A
Year of birth	1971

Family details

Family members	Ms Y (daughter)
Citizenship	Country A
Year of birth	1998

Ombudsman ID	1002494-O1
Date of department's reports	4 September 2017 and 5 March 2018
Total days in detention	1,277 (at date of the department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X and Ms Y have 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 Ms X and Ms Y 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 Ms Y's treatment.

5 March 2018	<p>The department advised Ms X and Ms Y had their Refugee Status Determination assessed by the Government of Nauru, and were found to not be refugees. They subsequently sought merits review of this decision and were found to be refugees.</p> <p>The department further advised that Ms X and Ms Y are plaintiffs in ongoing court proceedings in Australia.</p>
--------------	--

¹ Ms X and Ms Y were granted a placement in the community under s 197AB of the *Migration Act 1958* and remain in immigration detention.

Health and welfare

Ms X

International Health and Medical Services (IHMS) advised that Ms X continued to be monitored for a physical health concern. At the time of the IHMS's latest report she was awaiting results of investigative testing which would determine whether further specialist review was required.

Ms Y

IHMS advised that Ms Y frequently engages with a psychologist for the management of complex mental health concerns. In June 2017 it was recorded that Ms Y reported stress associated with her immigration status in Australia and the uncertainty of her future. She was provided with psychological support and was referred to a psychiatrist for consideration of medication therapy. IHMS further advised that as previously recorded by an IHMS Medical Director in July 2016, it continues to be clinically inappropriate for Ms Y to be transferred back to an RPC.

IHMS advised that Ms Y was previously referred for specialist review of an ongoing medical condition, but no further documentation had been provided.

Ombudsman assessment

Ms X and Ms Y were detained in 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.

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 19 July 2013 they remain liable for transfer back to an RPC on completion of Ms Y's treatment.

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

On 13 September 2017 the Minister advised that the department is supporting the Government of Nauru to finalise the Refugee Status Determination of Ms X and Ms Y while they remain temporarily in Australia for medical treatment.

Ms X and Ms Y have subsequently been found to be refugees by the Government of Nauru.

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

IHMS has advised that Ms Y continues to receive treatment for complex mental health concerns and that as previously advised by an IHMS Medical Director in July 2016 it continues to be clinically inappropriate for Ms Y to be transferred back to an RPC.

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