

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third 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 1002332-O1 was tabled in Parliament on 6 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1981	1984
Total days in detention	1,276 (at date of DIBP's report)	

Family details

Family members	Master Z (son)
Citizenship	Country A, born in Australia
Year of birth	2015
Total days in detention	762 (at date of DIBP's latest report)

Ombudsman ID	1002332-O2
Date of DIBP's reports	28 July 2017 ² and 22 August 2017

Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community.³

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.

22 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.
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¹ This is the first s 486O assessment on Master Z. For the purpose of reporting under s 486O, his timeline in detention has been aligned with his parents and the family is reported on together.

² Master Z was detained on 29 July 2015 following his birth to parents in immigration detention. Master Z was initially reported on individually under s 486N and is now reported on with his parents as of their 42-month report, dated 22 August 2017.

³ 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 continued to receive treatment for physical health concerns, including recurring nasal concerns and epigastric pain. Investigative testing identified potential liver concerns and he was referred to a specialist liver clinic for review.

IHMS further advised that Mr X's mental health continued to be monitored by a general practitioner (GP).

Ms Y

IHMS advised that Ms Y continued to receive treatment for an intestinal infection, hyperthyroidism and abdominal pain. She was reviewed by a gastroenterologist on 13 June 2017 and referred for investigative testing.

IHMS further advised that Ms Y's mental health continued to be monitored by a GP.

Master Z

IHMS advised that Master Z received treatment for urological concerns and was monitored by a GP. He underwent investigative testing in March 2016 and on 30 June 2017 a surgeon advised that surgery was not required.

IHMS further advised that Master Z was reviewed by a speech pathologist in May 2017 following speech concerns. Master Z's parents were provided with education and further appointments were scheduled.

Other matters

27 April 2017	The Australian Human Rights Commission finalised its investigation of Mr X and Ms Y's complaint, lodged on 19 May 2015. The matter is now closed.
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Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 26 July 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. Master Z was detained on 29 July 2015 following his birth to parents in immigration detention and has been held in detention in a community placement for more than two years.

Mr X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Mr X and Ms Y arrived after 19 July 2013, the family remains 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 while noting ongoing mental health concerns.

On 6 September 2017 the Minister noted the recommendation and advised that the department is supporting the government of Nauru to finalise the family's Refugee Status Determinations while they remain in Australia.

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.