

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 daughter¹ who have remained in immigration detention for a cumulative period of more than four years. The previous assessment 1002351-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	1984	1987
Total days in detention	1460 (at date of department's latest report)	1460 (at date of department's latest report)

Family details

Family members	Miss Z (daughter)
Citizenship	Unknown, born in Australia
Year of birth	2016
Total days in detention	788 (at date of department's latest report)

Ombudsman ID	1002351-O2
Date of department's reports	25 September 2017, 29 January 2018 and 26 March 2018

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 Home Affairs (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.	
December 2017	Following Refugee Status Determination by the Government of Nauru the family was notified that they had been found to be refugees.
March 2018	The department advised that Mr X and his family are plaintiffs in ongoing court proceedings in Australia.

¹ This is the first s 486O assessment on Miss Z. For the purpose of reporting under s 486O, her timeline in detention has been aligned with her parents and they are reported on together.

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 was referred for specialist review in May 2017 and continued to await an appointment.

IHMS further advised that they had little documentation regarding Mr X's mental health during this assessment period as his treating psychiatrist is not an IHMS provided psychiatrist, however he had previously been prescribed with medication and regularly engaged in psychiatric review.

Ms Y

IHMS further advised that Ms Y continued to attend specialist counselling and engaged with a psychiatrist for the management of mental health concerns. A specialist counsellor advised in September 2017 that the prolonged uncertainty of her future and the possibility of being returned to Nauru not only exacerbates her condition but makes recovery from her trauma extremely difficult.

May 2017

An Incident Report recorded that Ms Y threatened self-harm.

Miss Z

IHMS advised that Mr X and Ms Y were provided with specialist advice regarding Miss Z's sleeping patterns to assist with encouraging her to sleep more during the night.

Ombudsman assessment

Mr X and Ms Y were detained on 19 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 four years.

Mr 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 their treatment.

The Ombudsman's previous assessment recommended that priority be given to resolving Mr X and Ms Y's immigration status.

On 6 September 2017 the Minister advised that the department was supporting the Government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.

The family was subsequently found to be refugees by the Government of Nauru on 13 December 2017.

The family's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.

IHMS has advised that the prolonged uncertainty of Ms Y's future and the possibility of being returned to Nauru not only exacerbates her condition but makes recovery from her trauma extremely difficult.

It appears likely that the family will remain in detention for a prolonged and uncertain period while they receive medical treatment, posing a serious risk to their mental and physical health.