

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 and Ms Y who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002293-O was tabled in Parliament on 8 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X (and wife)	Ms Y (wife)
Citizenship	Stateless, born in Country A	Country A
Year of birth	1990	1991

Ombudsman ID	1002293-O1
Date of DIBP's reviews	13 January 2017 and 14 July 2017
Total days in detention	1,276 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002293-O), the family¹ has remained in community detention.

Recent visa applications/case progression

The Department of Immigration and Border Protection (the department) has advised that under current policy settings Mr 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 their treatment.	
14 July 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of Mr X and Ms Y while they remain temporarily in Australia for medical treatment.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X did not receive treatment for any major physical or mental health issues during this assessment period.

¹ Mr X and Ms Y's child, Miss Z, was born in Australia in October 2015 and detained on 8 October 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

Ms Y

IHMS advised that Ms Y has a history of mental health concerns, including depression, anxiety, post-natal depression and self-harm. She was further diagnosed with a psychiatric disorder following specialist review in March 2016. During this assessment period, Ms Y attended counselling and after declining further support, it was recommended that she continue to be monitored for her risk of depression and anxiety. In October 2016, her case worker advised IHMS that the family no longer wanted to engage with IHMS mental health services and wanted to develop their own links in the community to manage their mental health needs independently.

IHMS further advised that Ms Y was confirmed to be pregnant in March 2017, with an estimated date of delivery in November 2017. Ms Y continued to be monitored by a general practitioner.

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 5 December 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than three and a half 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 department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of Mr X and Ms Y while they remain temporarily in Australia for medical treatment.

The Ombudsman's previous assessment (1002293-O) recommended that priority be given to resolving Mr X's and Ms Y's immigration status while noting ongoing mental health concerns.

On 8 November 2016 the Minister noted the recommendation and advised that under current legislation and policy settings, Mr X and Ms Y remain subject to return to a 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.

The Ombudsman notes that under current policy settings Mr X and Ms Y are 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 again recommends that the department expedite the resolution of Mr X and Ms Y's immigration status.