

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Mr X, Ms Y and their daughters who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X (and family)	Ms Y (wife)
Citizenship	Country A	Country A
Year of birth	1982	1985
Total days in detention	912 (at date of department's latest report)	

Family details

Family members	Miss Z (daughter)	Miss P (daughter)
Citizenship	Country B	Country A, born in Australia
Year of birth	2012	2015
Total days in detention	912 (at date of department's latest report)	798 (at date of department's latest report)

Ombudsman ID	1002679-O
Date of department's reports	21 May 2017, 13 September 2017 ¹ and 20 November 2017

Detention history

27 July 2014	Mr X, Ms Y and Miss Z were detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to Cocos Island.
1 August 2014	Transferred to Nauru Regional Processing Centre (RPC). ²
27 May 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point Alternative Place of Detention.
12 February 2016	Placed in the community. ³

¹ Miss P was detained on 14 September 2015 following her birth to parents in immigration detention. Miss P was initially reported on individually under s 486N and is now reported on with her family as of their 30 month report, dated 20 November 2017.

² Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

³ The family was granted a placement in the community under s 197AB and remains in immigration detention.

Visa applications/case progression

<p>Mr X, Ms Y and Miss Z arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Home Affairs (the department) has advised that the family is barred under ss 46A and 46B from lodging a valid protection visa application in Australia as a result of their method of arrival and transfer to an RPC.</p> <p>Mr X, Ms Y and Miss Z were returned to Australia from an RPC for medical treatment on 27 May 2015. Miss P was born in Australia following her family's return.</p> <p>The department has advised that under current policy settings the family is not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their treatment.</p>	
27 January 2016	The Minister intervened under s 197AB to grant the family a community placement.
20 November 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.

Other legal matters

20 November 2017	The department advised that Mr X is a plaintiff in ongoing court proceedings.
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Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and referred for physiotherapy for the treatment of heel, back and knee pain. He underwent investigative testing which identified no abnormalities and was provided with orthotics to help to relieve his pain.</p> <p>IHMS further advised that Mr X disclosed a history of torture and trauma but declined to attend specialist counselling.</p>	
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Ms Y

<p>IHMS advised that Ms Y underwent investigative testing in July 2015 after presenting with underarm pain. The test identified a lipoma that did not require further investigation or treatment at the time. She was also referred for physiotherapy after she presented with back and joint pain in October 2016.</p> <p>IHMS further advised that Ms Y disclosed a history of torture and trauma but declined to attend specialist counselling.</p>	
September 2015	Gave birth to her daughter.

Miss Z

<p>IHMS advised that Miss Z was reviewed by a general practitioner (GP) after her parents reported concerns regarding her eating habits and low weight. Miss Z was prescribed with vitamin supplements for gastrointestinal concerns and her parents were provided with dietary advice.</p>	
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Miss P

IHMS advised that Miss P was prescribed with an inhaler after presenting to a GP with a persistent cough and was able to access further medical care as required.

Ombudsman assessment

Mr X, Ms Y and Miss Z were detained on 27 July 2014 after arriving in Australia by sea and Miss P was detained on 14 September 2015 following her birth to parents in immigration detention. The family has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two 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 their treatment.

The department further advised that it is supporting the government of Nauru to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.

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.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose.