

## 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 son<sup>1</sup> who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X (and family)	Ms Y (wife)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1979	1983
<b>Total days in detention</b>	914 (at date of department's latest report)	914 (at date of department's latest report)

### Family details

<b>Name</b>	Master Z (son)
<b>Citizenship</b>	[citizenship not stated], born in Australia
<b>Year of birth</b>	2015
<b>Total days in detention</b>	803 (at date of department's latest report)

<b>Ombudsman ID</b>	1002708-O
<b>Date of department's reports</b>	6 July 2017, 21 October 2017 and 2 January 2018

### Detention history

27 July 2013	Mr X and Ms Y were detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention, Christmas Island.
25 August 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>2</sup>
1 August 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Facility B.
17 March 2016	Placed in the community. <sup>3</sup>

<sup>1</sup> Master Z was detained on 22 October 2015 following his birth to parents in immigration detention. For the purpose of reporting under s 486N, his timeline in detention has been aligned with his parents and they are reported on together.

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

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

## Visa applications/case progression

<p>Mr X and Ms Y 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 and Ms Y were returned to Australia from an RPC for medical treatment on 1 August 2015.</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 remains liable for transfer back to an RPC on completion of their treatment.</p>	
3 March 2016	<p>The Minister intervened under s 197AB to grant the family a community placement.</p> <p>On 12 December 2016 the Minister intervened under 197AB to allow Mr X and Ms Y's second son, Master P,<sup>4</sup> to reside in the community with his family.</p>
6 July 2017, 21 October 2017 and 2 January 2018	<p>The department advised that Mr X and Ms Y had undergone a Refugee Status Determination by the government of Nauru and have been found to be refugees.</p> <p>Their sons had not undergone a Refugee Status Determination by the government of Nauru at the time of the department's latest report.</p>

## Health and welfare

### *Mr X*

International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple complex mental health concerns, including detention fatigue, chronic stress, insomnia and depression. In April 2014 he reported experiencing isolation, nightmares and thoughts of suicide. He was reviewed by a psychiatrist in May 2014 and prescribed with medication to help with his sleeping difficulties and nightmares. In August 2015 it was noted that Mr X's wife was mentally unwell and Mr X had become the sole carer of their son. IHMS reported that Mr X continued to be prescribed with medication following the family's placement in the community.

IHMS further advised that Mr X received treatment for chronic back and knee pain, gastric concerns, hearing loss and tremors that had worsened after being in immigration detention.

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<sup>4</sup> Master P was born in Australia in September 2016 and detained on 6 March 2017. He 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 received intensive psychological support for complex mental health concerns, including major depression, post-traumatic stress disorder (PTSD) and a history of torture and trauma. In August 2013 Ms Y attended regular psychological counselling after experiencing a traumatic journey to Australia where she witnessed deaths at sea.

After giving birth to her son in August 2015, Ms Y was diagnosed with postnatal depression and remained in hospital for an extended period of time. Upon discharge, treating health professionals advised that Ms Y's separation from her husband and son was negatively affecting her recovery. She was transferred back to Facility B under an involuntary treatment order and was closely supervised by a mental health service.

Following the family's placement in the community Ms Y continued to engage with a psychiatrist who noted that Ms Y's mood was slowly improving. She was supported in the community by a multidisciplinary team, including a psychiatrist, counsellor, general practitioner and mental health service. In July 2017 a psychiatrist reported that Ms Y was coping better and was focusing on her future. She was recommended to attend ongoing counselling.

IHMS further advised that Ms Y was closely monitored during her second pregnancy due to her significant mental health concerns, high doses of antidepressant medication and gestational diabetes. She received postnatal treatment after giving birth to her second son.

IHMS also advised that Ms Y attended physiotherapy in July 2017 for treatment of foot and back pain.

1 August 2015 – 28 October 2015	Admitted to hospital for the birth of her son and treatment of postnatal depression.
3 August 2015	An Incident Report recorded that Ms Y threatened self-harm.
September 2016	Gave birth to Master P.

*Master Z*

IHMS advised that Master Z was reviewed by an optometrist for vision concerns.

8 April 2016 and 27 June 2016	Attended hospital for treatment of fevers and vomiting on two occasions.
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### **Ombudsman assessment/recommendation**

Mr X and Ms Y were detained on 27 July 2013 after arriving in Australia by sea. Master Z was detained on 22 October 2015 following his 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.

Mr X and Ms Y were 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.

Mr X and Ms Y have been found to be refugees by the government of Nauru. Their sons, Master Z and Master P, have not undergone a Refugee Status Determination by the government of Nauru.

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

IHMS advised that Mr X and Ms Y required specialist treatment for multiple complex mental health concerns. Ms Y continues to require ongoing psychological support for major depression, PTSD and a history of torture and trauma.

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.

The Ombudsman recommends that the department make arrangements for the processing of Mr X and Ms Y sons' protection claims.