

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 son¹ 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	1983	1989
Total days in detention	912 (at date of DIBP's latest report)	912 (at date of DIBP's latest report)

Name	Master Z (son)
Citizenship	Country A, born in Australia
Year of birth	2015
Total days in detention	787 (at date of DIBP's latest report)

Ombudsman ID	1002596-O
Date of DIBP's reports	8 February 2017 and 10 August 2017

Detention history

27 July 2014	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 Curtin Immigration Detention Centre.
1 August 2014	Transferred to Nauru Regional Processing Centre (RPC). ²
14 February 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Blaydin Alternative Place of Detention (APOD).
26 February 2015	Transferred to Wickham Point APOD.
31 March 2016	The family was transferred to community detention.

¹ Master Z was born in Australia in 2015 and was subject to an individual assessment under s 486N. He was previously reported on in Ombudsman assessment 2000003-O and is now included in his family's assessment.

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.

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 Immigration and Border Protection (the department) has advised that they are 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 14 February 2015. The department has advised that under current policy settings they are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of Ms Y's treatment.</p>	
24 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.
10 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.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for a skin condition and liver condition. Mr X underwent testing for his skin condition and was prescribed with medication and topical relief. Mr X's liver condition continued to be monitored by a general practitioner and he was provided with lifestyle advice.</p> <p>IHMS further advised that upon review in February 2016 Mr X displayed symptoms of anxiety and depression and it was recommended that he attend follow-up consultations with the mental health team as required.</p>
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Ms Y

<p>IHMS advised that following the birth of her son, Ms Y experienced significantly torn abdominal muscles. She underwent physiotherapy sessions and had been placed on a surgical waiting list prior to being transferred to community detention. Ms Y's condition continued to be monitored by a general practitioner. Ms Y also received treatment for ongoing pain in her thumb which was managed with anti-inflammatory gels. A doctor discussed the possibility of steroid injections if pain persisted.</p> <p>IHMS further advised that Ms Y attended counselling for the management of post-natal depression and anxiety. Ms Y was advised on the benefits of medication and it was suggested that she increase her exercise and participation in activities. A psychiatrist recommended that Ms Y be placed in the community as she had lived in refugee camps since childhood.</p>	
30 May 2015	Gave birth to her son.

Master Z

<p>The department advised that an IHMS Health Report had not been provided for Master Z for the family's 30-month report as his most recent health report had been provided for his individual 24-month report which was the subject of Ombudsman assessment 2000003-O.</p>

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 27 July 2014 after arriving in Australia by sea and have been held in detention 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 Mr X and Ms Y arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of Ms Y's 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 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 recommends that priority is given to resolving the family's immigration status.