

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 Ms X and her son, Mr Y who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Ms X (and son)	Mr Y (son)
Citizenship	Country A	Country A
Year of birth	1971	1996

Ombudsman ID	1002605-O
Date of DIBP's reports	21 February 2017 and 27 August 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

27 July 2014	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. Ms X and Mr Y were transferred to Curtin Immigration Detention Centre (IDC).
1 August 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 February 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point IDC.
28 February 2015	Transferred to Melbourne Immigration Transit Accommodation.
18 August 2016	Transferred to community detention.

Visa applications/case progression

<p>Ms X and Mr 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>Ms X and Mr Y were returned to Australia from an RPC for medical treatment on 27 February 2015.</p> <p>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 their treatment.</p>	
12 August 2016	The Minister intervened under s 197AB to allow Ms X and Mr Y to reside in community detention.
27 August 2017	The department advised that it is supporting the government of Nauru to finalise the Refugee Status Determinations of Ms X and Mr Y while they remain temporarily in Australia for medical treatment.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X received treatment for multiple complex mental health concerns including a history of torture and trauma, depression and post-traumatic stress disorder. Ms X was prescribed with medication, regularly engaged with specialist counselling and the mental health team and was placed under Supportive Monitoring and Engagement observations as required. She reported feelings of hopelessness, fear for her safety, and ongoing sleeping difficulties. A psychiatrist advised that Ms X's mental health was significantly affected by her ongoing placement within an immigration detention facility and recommended her release into community detention. Following her placement in the community, Ms X continued to take prescribed antidepressant medication and attended counselling.</p> <p>IHMS further advised that Ms X received treatment for ongoing headaches resulting from a pre-existing injury, carpal tunnel syndrome and thyroid concerns. Ms X underwent testing and was prescribed with medication for her headaches and thyroid function. She was advised to undertake nerve conduction studies to relieve symptoms of pain in her hands and was referred to a surgical specialist to discuss possible intervention. The specialist advised that Ms X should undertake further nerve conduction studies, and a neurology appointment to determine the success of this treatment was pending at the time of IHMS's latest report.</p>	
16 October 2014	Ms X alleged that she was the victim of a sexual assault while placed at Nauru RPC. In November 2015 Ms X advised that she did not wish to pursue the matter with Nauru police.
10 July 2015 - 5 April 2016	Incident Reports recorded that Ms X threatened self-harm on multiple occasions.
19 February 2016	Incident Reports recorded that Ms X self-harmed and was admitted to hospital.

Mr Y

<p>IHMS advised that Mr Y attended specialist counselling for the management of a history of torture and trauma. A counsellor advised that Mr Y's depressed mood and anxiety had improved since he had adjusted to living in the community.</p>

Ombudsman assessment/recommendation

Ms X and Mr 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.

Ms X and Mr 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 Ms X and Mr Y 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 Ms X and Mr 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 their immigration status.