

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Mr X, Ms Y and their family¹ who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years). The previous assessment 1002380-O1 was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

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| Name | Mr X (and family) | Ms Y (wife) |
| Citizenship | Country A/Country B (dual citizenship) | Country A/Country B (dual citizenship) |
| Year of birth | 1977 | 1980 |
| Total days in detention | 1,276 (at date of department's latest report) | 1,276 (at date of department's latest report) |

Family details

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| Family members | Mr Z (son) | Master P (son) | Miss Q (daughter) |
| Citizenship | Country A/Country B (dual citizenship) | Country A/Country B (dual citizenship) | Country B, born in Australia |
| Year of birth | 1998 | 2004 | 2015 |
| Total days in detention | 1,276 (at date of department's latest report) ² | 1,276 (at date of department's latest report) | 798 (at date of department's latest report) |

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| Ombudsman ID | 1002380-O2 |
| Date of department's reports | 16 August 2017 and 23 October 2017 |

Recent detention history

Since the Ombudsman's previous assessment, the family has continued to be placed in the community.³

Recent visa applications/case progression

The Department of Home Affairs (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 a Regional Processing Centre (RPC) on completion of their treatment.

¹ This is the first s 486O assessment on Miss Q who was detained on 17 August 2015 following her birth to parents in immigration detention. Miss Q was initially reported on individually under s 486N and is now reported on with her family as of their 42-month report, dated 23 October 2017. For the purpose of reporting under s 486O, her timeline in detention has been aligned with her family and they are reported on together.

² The department advised that previous reports under s 486N manually omitted a period of time Mr Z served in a correctional facility in the calculation of his days in detention. As departmental systems record him as being detained under s 189(1) during this period, it has now been included in the calculation of his days in detention.

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

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| 16 August 2017 and 23 October 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. |
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Other legal matters

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| 23 October 2017 | The department advised that Mr Z's outstanding criminal matter had been scheduled for hearing in March 2018. |
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Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for multiple physical health concerns, including type 2 diabetes, urological concerns, heel spurs, a cardiac abnormality and headaches. He attended a neurological consultation in February 2017 and investigative testing indicated carpal tunnel syndrome in his right wrist. He was administered a cortisone injection and referred for physiotherapy.

IHMS further advised that Mr X was referred to psychological counselling for the management of depression and continued to be compliant with his prescribed antidepressant medication.

Ms Y

IHMS advised that Ms Y continued to receive treatment for ongoing mental health concerns, including an adjustment disorder, depression and a history of torture and trauma. In March 2017 a treating psychiatrist noted that Ms Y had a major depressive disorder which was reactive and caused by her prolonged detention, stressful life events, family stressors and uncertain future. She attended regular psychological counselling and a treating psychologist documented that Ms Y was suffering from the effects of situational trauma from her journey to Australia and ongoing detention. The psychologist noted in several reports that her mental health would improve if the family was transferred to City C where they would have the support of extended family. The psychologist also strongly recommended that Ms Y not be returned to an RPC due to the likely detrimental impact on her mental health. She continued to be monitored by treating clinicians.

IHMS further advised that Ms Y was referred for physiotherapy and prescribed with medication for the treatment of urological and gynaecological concerns. Ms Y advised that her ongoing symptoms restricted her ability to leave the house during the day and she was referred for further specialist review.

Mr Z

IHMS advised that Mr Z was referred to a psychiatrist in March 2017 after presenting to a general practitioner (GP) with symptoms of depression relating to his immigration pathway and his upcoming court case. The psychiatrist diagnosed Mr Z with an adjustment disorder with mixed anxiety and depressive mood. He was prescribed with medication and the treating psychiatrist recommended that a quick resolution of Mr Z immigration pathway and ongoing court process would be beneficial for his mental health and would prevent further deterioration of his mental state. He continued to be monitored by a GP.

IHMS further advised that Mr Z was awaiting an appointment with a urology specialist for the management of nocturnal enuresis and continued to be monitored by a psychologist and psychiatrist for this condition.

Master P

IHMS advised that Master P continued to be monitored for multiple complex mental health concerns, including an adjustment disorder, anxiety, depression, post-traumatic stress disorder and a history of torture and trauma. In May 2017 it was noted that Master P continued to experience significant psychological symptoms related to his past experiences in an immigration detention facility, the uncertainties regarding his family's immigration pathway and his family's psychological stress. A treating paediatrician noted that the family's uncertain visa status was directly contributing to Master P's negative psychological and physical wellbeing and advised that the granting of residency would facilitate healthy outcomes for Master P and Miss Q. Master P regularly attended specialist counselling and IHMS advised that Master P regularly expressed suicidal ideation. Further specialist review, psychological support and ongoing therapeutic intervention were recommended.

IHMS further advised that he continued to be monitored for his enuresis and was referred for an ultrasound in June 2017.

Miss Q

IHMS advised that Miss Q was reviewed for sleeping difficulties and psychosocial stressors within the family. A treating paediatrician recommended that Miss Q be closely monitored for her psychosocial and developmental wellbeing. It was noted that the family's ongoing visa uncertainty was directly contributing to the negative psychological and physical wellbeing of the family and the environment in which Miss Q was developing.

IHMS further advised that Miss Q was reviewed by a paediatrician and was admitted to hospital for the investigation and treatment of breathing concerns. She was recommended to drink thickened formula and an improvement in her breathing was noted.

Ombudsman assessment/recommendation

The family was detained on 25 July 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than three 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's previous assessment recommended that priority be given to resolving the family's immigration status.

On 13 September 2017 the Minister advised that the department is supporting the government of Nauru to finalise the family's Refugee Status Determination while they remain in Australia.

The Ombudsman notes that the family's return to an RPC is likely to be protracted due to their ongoing mental and physical health concerns.

IHMS has advised that treating psychiatrists have stated that the family's uncertain immigration status is directly contributing to the negative physical and psychological wellbeing of the family, and in particular the granting of residency would facilitate healthy outcomes for both Master P and Miss Q. Additionally, a psychiatrist noted that a quick resolution of Mr Z's immigration pathway and ongoing court process would be beneficial for his mental health. It was further recommended that the family be transferred to Sydney where they would have the support of extended family while noting that a return to an RPC would be detrimental to Ms Y's mental health.

The Ombudsman notes with concern that 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 further notes the government's duty of care to detainees and the serious risk to mental and physical health posed by a prolonged and uncertain period of detention.

In light of the ongoing and significant mental and physical health concerns of the family, the Ombudsman recommends that the Minister vary the family's community placement under s 197AD of the *Migration Act 1958* to facilitate a transfer to City C where they would have extended family support.