

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O report on Mr X and his wife, Ms Y, who have remained in immigration detention for a cumulative period of more than 36 months (three years).

The first report 1002351-O was tabled in Parliament on 8 November 2016. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1984

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1987

Ombudsman ID	1002351-O1
Date of DIBP's reports	24 September 2016 and 27 March 2017
Total days in detention	1095 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002351-O), Mr X and his family¹ remained in community detention.

Recent visa applications/case progression

The Department of Immigration and Border Protection (the department) has advised that under current policy settings Mr X and his family are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to a Regional Processing Centre (RPC) on completion of their treatment.

¹ Miss Z was born in Australia in January 2016 and detained on 28 January 2016. She has been in detention for less than two years and is not subject to reporting under s 486N.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for complex mental health concerns, including major depression with auditory hallucinations and an adjustment disorder. He attended regular psychiatric and specialist counselling and improvements in his mental health have been reported. His condition continued to be monitored by a general practitioner.

IHMS further advised that Mr X received treatment for intermittent migraines and was prescribed with medication as required.

Ms Y

IHMS advised that Ms Y continued to attend specialist counselling and was diagnosed with post-natal depression following the birth of her daughter. She was prescribed with medication and referred to a specialist support group.

IHMS further advised that Ms Y received treatment for multiple physical health conditions, including gall stones and abdominal pain. She underwent a surgical procedure on 29 November 2016 and was referred for a gastroscopy.

Recent detention incidents

16 November 2015	The department advised that Mr X was allegedly involved in an incident in restricted detention and the matter was referred to the police for investigation. On 21 March 2016 the police advised that the incident would not be investigated further and the matter was closed.
------------------	--

Other matters

27 March 2017	The department advised that the family's complaint with the Australian Human Rights Commission remained ongoing.
---------------	--

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 19 August 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than three years with no processing of their protection claims.

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 their treatment.

The Ombudsman notes the advice from IHMS that Mr X and Ms Y have medical conditions that require ongoing 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 his family are not eligible to have their protection claims assessed in Australia and that without an assessment of the family's claims it appears likely they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving the family's immigration status.