

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the first s 486O report on Mr X and his family 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)
Citizenship	Country A
Year of birth	1979

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	1982	2012

Ombudsman ID	1002473-O
Date of DIBP's reports	14 August 2016 and 13 February 2017
Total days in detention	913 (at date of DIBP's latest report)

Detention history

11 November 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 863 <i>Unalakleet</i> . The family was transferred to an Alternative Place of Detention, Christmas Island.
11 April 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
13 January 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Sydney Immigration Residential Housing.
8 January 2016	Transferred to community detention.

Visa applications/case progression

Mr X and his family 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 the family is barred under ss 46A and 46B from lodging a valid protection visa application as a result of their method of arrival and transfer to an RPC.

The family was returned to Australia for medical treatment on 13 January 2015.

The department has advised that under current policy settings the family is not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of their 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.

19 December 2015	The Minister intervened under s 197AB to allow the family to reside in community detention.
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Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X was prescribed with antidepressant medication for management of adjustment disorder with anxious and depressed mood related to his immigration status and the health of his son. In July 2015 Mr X was admitted to hospital following an incident of self-harm related to his fear of being returned to Nauru. He was advised to self-refer to mental health services as required.

IHMS further advised that Mr X received treatment for multiple physical health conditions, including kidney stones and chronic psoriasis.

Ms Y

IHMS advised that Ms Y was prescribed with antidepressant medication and received counselling for management of adjustment disorder with anxious and depressed mood related to the health of her son and fear of being returned to Nauru. In July 2015 she was placed on Supportive Monitoring and Engagement observations following an incident of self-harm related to her immigration status. Her condition continued to be monitored by a general practitioner (GP) and psychologist in community detention.

Master Z

IHMS advised that Master Z was born with a genetic blood abnormality and required ongoing monitoring by a GP.

Master Z also received treatment for multiple physical health conditions, including tuberculosis, abdominal pain, sleep apnoea and recurrent tonsillitis. On 2 August 2016 he was admitted to hospital for a tonsillectomy and adenoidectomy and attended follow-up reviews with a paediatric specialist.

Ombudsman assessment/recommendation

Mr X and his family were detained on 11 November 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years with no processing of their protection claims in Australia.

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 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 with serious concern the reported negative impact that the uncertainty of the family’s immigration pathway is having on their mental health.

The Ombudsman notes that under current policy settings the family is 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.