

**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 Ms X who has remained in immigration detention for a cumulative period of more than 24 months (two years).

Name	Ms X
Citizenship	Country A
Year of birth	1981
Ombudsman ID	1002411-O
Date of DIBP's report	23 May 2016
Total days in detention	732 (at date of DIBP's report)

Detention history

27 August 2013	Ms X was detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia with her husband, Mr Y ¹ aboard Suspected Illegal Entry Vessel (SIEV) 840 <i>Xanadu</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
29 August 2013	They were transferred to Christmas Island Immigration Detention Centre.
20 September 2013	They were transferred to Nauru Regional Processing Centre (RPC). ²
15 June 2014	Ms X was returned to Australia and re-detained under s 189(1). She was transferred to Brisbane Immigration Transit Accommodation (ITA). Mr Y remained at Nauru RPC.
27 June 2014	Ms X was transferred to Wickham Point APOD.
31 July 2014	Ms X was transferred to Brisbane ITA.
12 August 2014	Mr Y was transferred to Brisbane ITA and reunited with Ms X.
9 October 2014	They were transferred to Bladin APOD.
26 February 2015	They were transferred to Wickham Point APOD.
19 April 2015	The family ³ was transferred to Melbourne ITA.
29 November 2015	Mr Y was transferred to Wickham Point APOD. Ms X remained at Melbourne ITA.
1 January 2016	Mr Y was transferred to Melbourne ITA and reunited with his family.
7 January 2016	The family was transferred to community detention.

¹ Mr Y is the subject of Ombudsman report 1002449-O.

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.

³ Miss Z was born in Australia in March 2015 and detained on 31 March 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

Visa applications/case progression

15 June 2014	Ms X was transferred from Nauru RPC to Australia for medical treatment.
29 December 2015	The Minister intervened under s 197AB to allow Ms X and her family to reside in community detention.
16 March 2016	The Department of Immigration and Border Protection (DIBP) confirmed that detainees who arrived in Australia after 19 July 2013 who were transferred to an RPC but returned to immigration detention in Australia for medical reasons remain liable for transfer back to an RPC on completion of their treatment.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X received psychiatric and psychological treatment for multiple complex mental health concerns, including borderline personality disorder, panic attacks, anxiety, depression and post-natal depression. In October 2013 she disclosed a history of torture and trauma and attended regular specialist counselling.</p> <p>IHMS advised that she was admitted to hospital for psychiatric treatment on multiple occasions following threats of self-harm and suicide attempts and was placed on continuous Supportive Monitoring and Engagement observations while held in restricted detention.</p> <p>On 9 September 2015 the psychiatrist referred Ms X for specialist support to improve her relationship with her daughter, including family counselling with her husband.</p> <p>In January 2016 the IHMS Mental Health Medical Director advised that it is clinically inappropriate for Ms X to be transferred to a RPC as the psychiatric facilities are not adequate for her condition and that she remains at a high risk of involuntary admission to hospital.</p> <p>IHMS further advised that Ms X received treatment for multiple physical health conditions including neck pain, tendon inflammation and gastric reflux. On 1 June 2015 she was diagnosed with a benign cyst and referred for surgical review.</p>	
14 June 2014 – 20 June 2014	Ms X was returned to Australia and admitted to hospital for psychiatric treatment following an attempted suicide at Nauru RPC.
30 July 2014 – 11 September 2014	Ms X was admitted to a psychiatric hospital following threats of self-harm.
13 September 2014 – 30 September 2014	Ms X was admitted to hospital for psychiatric treatment following an attempted suicide at Brisbane ITA.
March 2015	Ms X gave birth to her daughter without complication.
4 June 2015 – 10 June 2015	Ms X was admitted to hospital for treatment following an attempted suicide at Melbourne ITA.
May 2016	Ms X gave birth to her son ⁴ without complication.

⁴ Master P was born in Australia in May 2016 and has been in detention for less than two years. He is not subject to reporting under s 486N.

Other matters

31 July 2014	Ms X lodged a complaint with the Australian Human Rights Commission (AHRC). DIBP provided a response on 29 August 2014 and on 13 May 2015 the AHRC advised that the case was finalised.
18 May 2015	Ms X lodged a complaint with the AHRC. DIBP provided multiple responses and on 27 April 2016 the AHRC advised that the complaint would be subject to further consideration. The matter remains ongoing.

Information provided by Ms X

Ms X contacted the Ombudsman's office on 21 July 2014 and noted concerns as to her separation from her husband who was still in Nauru RPC. At the time she was pregnant and was subject to monitoring due to suicide risk. Ms X stated that she wished to be reunited with her husband so she could have his support.

Mr Y contacted the Ombudsman's office on the behalf of Ms X on 16 September 2014 and noted concerns as to his wife's condition after being transferred to hospital following an attempted suicide. He was not allowed to visit Ms X and felt that she would benefit from his support if he was able to visit her.

Ombudsman assessment/recommendation

Ms X was detained on 27 August 2013 after arriving in Australia aboard *SIEV Xanadu* and has been held in detention for a cumulative period of over two years with no processing of her protection claims.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. Without an assessment of Ms X's claims to determine if she is found to engage Australia's protection obligations, it appears likely that she will remain in detention for an indefinite period.

The Ombudsman notes advice from IHMS that Ms X received treatment for multiple significant mental health concerns and was returned to Australia from Nauru RPC for psychiatric treatment. The Ombudsman further notes advice from the IHMS Mental Health Medical Director that Ms X cannot be adequately supported at Nauru RPC given the incomplete psychiatric facilities available.

The Ombudsman further notes DIBP's advice that because Ms X was transferred to an RPC but returned to immigration detention in Australia for medical reasons she remains liable for transfer back to an RPC on completion of her treatment.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Ms X's immigration status.