

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

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1979

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1981

Ombudsman ID	1002416-O
Date of DIBP's report	26 May 2016
Total days in detention	730 (at date of DIBP's report)

Detention history

19 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 836 <i>Trinity</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
23 August 2013	Transferred to Christmas Island Immigration Detention Centre.
8 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
15 November 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
5 February 2016	The family ² was transferred to community detention.

Visa applications/case progression

15 November 2014	Mr X and Ms Y were transferred from Nauru RPC to Australia for medical treatment.
19 January 2016	The Minister intervened under s 197AB to allow Mr X and Ms Y to reside in community detention.

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.

² Master Z was born in Australia in September 2015 and has been in detention for less than two years. He is not subject to reporting under s 486N.

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.
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Other legal matters

24 June 2014	Mr X was previously of interest to DIBP in relation to alleged criminal matters while onshore. The Northern Territory Police advised that no further investigation was required and the matter was finalised.
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Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X had been diagnosed with leukaemia and received chemotherapy prior to his arrival in Australia. He is currently in remission and monitored by a multidisciplinary team, including a general practitioner (GP) and a haematology specialist.</p> <p>In August 2014 Mr X was diagnosed with nasal abnormalities and underwent a surgical procedure on 24 June 2015. In addition, he has been identified as a tuberculosis contact and continues to be monitored as per state policy.</p> <p>IHMS further advised that Mr X has a history of self-harm and suicidal ideation and was diagnosed with a personality disorder. While held in restricted detention, he was placed on Supportive Monitoring and Engagement (SME) observations on multiple occasions and monitored by the mental health team (MHT). IHMS advised that no mental health concerns have been recorded following his transfer to community detention.</p>	
15 January 2014	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.
15 January 2015 – 18 April 2015	DIBP Incident Reports recorded that Mr X self-harmed on four occasions by striking his head and was closely monitored by Serco officers.
28 April 2015	A DIBP Incident Report recorded that Mr X threatened self-harm if returned to Nauru RPC.

Ms Y

<p>IHMS advised that Ms Y disclosed a history of torture and trauma and attended specialist counselling. While held in restricted detention, she was regularly reviewed by the MHT for management of anxiety and depression and placed on SME observations on multiple occasions following incidents of self-harm. Following her transfer to community detention, she was referred for further counselling and continued to be monitored by the GP.</p>	
14 April 2015	A DIBP Incident Report recorded that Ms Y was reviewed by IHMS following an attempted suicide. No further information was provided.
September 2015	Ms Y gave birth to her son without complication.

Other matters

16 January 2015	Mr X and Ms Y lodged a complaint with the Australian Human Rights Commission (AHRC). DIBP provided a response on 22 January 2015 and Ms Y withdrew the complaint on 28 May 2015. The matter was closed on 2 June 2015.
4 June 2015	Ms Y lodged a complaint with AHRC regarding her liability to be returned to Nauru RPC. The matter remains ongoing.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and Ms Y were detained on 19 August 2013 after arriving in Australia aboard SIEV *Trinity* and have been held in detention for a cumulative period of over two years with no processing of their 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 Mr X and Ms Y's claims to determine if they are found to engage Australia's protection obligations, it appears likely that they will remain in detention for an indefinite period.

The Ombudsman further notes DIBP's advice that because Mr X and Ms Y were transferred to an RPC but returned to immigration detention in Australia for medical reasons they remain liable for transfer back to an RPC on completion of their treatment.

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