

**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	1971

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	1987	2006

Ombudsman ID	1002479-O
Date of DIBP's reports	25 August 2016 and 23 February 2017
Total days in detention	912 (at date of DIBP's latest report)

Detention history

6 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 816 <i>Wetumpka</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
7 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 February 2015	Returned to Australia and re-detained under s 189(1). Transferred to Wickham Point APOD.
10 March 2016	Transferred to 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.

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 Mr X and his family are 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.

Mr X and his family were returned to Australia for medical treatment on 27 February 2015.

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 an RPC on completion of their treatment.

12 March 2014	The department notified the family of the unintentional release of personal information. ²
26 February 2016	The Minister intervened under s 197AB to allow Mr X and his family to reside in community detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X was referred for cardiac stress testing following recurring chest pains. Mr X was prescribed with medication and routinely reviewed by a general practitioner (GP). IHMS advised that Mr X reported ongoing knee pain and was prescribed with pain relief medication and referred for specialist appointments, magnetic resonance imaging and physiotherapy.

IHMS further advised that Mr X presented to a GP with sleeping difficulties and low energy and was provided with advice.

30 March 2015 and 16 April 2015	Incident reports recorded that Mr X required ambulance assistance on two occasions, once requiring transportation to hospital.
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Ms Y

IHMS advised that Ms Y was referred to an ear, nose and throat specialist due to ear and hearing concerns following a motorcycle accident in 2011. She was prescribed with medication and continued to be monitored by a GP. In June 2016, Ms Y was confirmed to be pregnant with an estimated due date of 6 February 2017.

IHMS further advised that Ms Y attended specialist and psychological counselling for the management of post-traumatic stress disorder (PTSD) and anxiety. She further disclosed that she experienced trauma while placed at Nauru RPC and had attempted suicide in April 2015. Ms Y reported that her family's possible return to Nauru RPC directly impacts on her mental health, causing her stress and anxiety exacerbated by concerns for her unborn baby and her husband's deteriorating health.

² In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

Master Z

IHMS advised that Master Z reported ongoing abdominal pain that has impacted on his ability to attend school. He was referred for an ultrasound, prescribed with medication and referred to a psychologist to assess whether the condition is associated with anxiety.

IHMS advised that Master Z attended specialist counselling and regularly engaged with a psychologist for the management of PTSD, an adjustment disorder, depression and anxiety. In December 2016 Master Z was referred to a child psychiatrist with an appointment yet to be scheduled at the time of the department's review.

Other matters

20 August 2015	Ms Y lodged a complaint with the Ombudsman's office regarding concerns in relation to the medical treatment available to her and Mr X. On 30 September 2015 the department provided a response and on 5 October 2015 the investigation was finalised.
Ms Y's cousin Mr P arrived in Australia with Ms Y and her family and is the subject of Ombudsman report 1002516-O.	

Ombudsman recommendation

Mr X and his family were detained on 6 August 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.

Mr X and his family were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Mr X and his family 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 his family 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 with concern Ms Y and Master Z's significant mental health concerns and Ms Y's stress and anxiety regarding the family's possible return to Nauru RPC.

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 Mr X and his family's immigration status.