

## 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 restricted immigration detention for more than 24 months (two years).

|                      |                 |
|----------------------|-----------------|
| <b>Name</b>          | Mr X (and wife) |
| <b>Citizenship</b>   | Country A       |
| <b>Year of birth</b> | 1985            |

### Family details

|                       |             |
|-----------------------|-------------|
| <b>Family members</b> | Ms Y (wife) |
| <b>Citizenship</b>    | Country A   |
| <b>Year of birth</b>  | 1991        |

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|--------------------------------|--------------------------------|
| <b>Ombudsman ID</b>            | 1003215                        |
| <b>Date of DIBP's report</b>   | 13 August 2015                 |
| <b>Total days in detention</b> | 732 (at date of DIBP's report) |

### Detention history

|                  |   |
|------------------|---|
| 11 August 2013   | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 829 <i>Marbury</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 20 August 2014   | Transferred to Christmas Island Immigration Detention Centre (IDC).   |
| 17 January 2014  | Transferred to Northern IDC.  |
| 18 January 2014  | Transferred to Perth IDC.   |
| 10 February 2014 | Transferred to Yongah Hill IDC.   |
| 14 March 2014    | Transferred to Christmas Island IDC.  |
| 25 March 2014    | Transferred to Christmas Island APOD.   |
| 21 May 2014      | Transferred to Wickham Point APOD.  |
| 2 July 2014      | Transferred to Christmas Island APOD.   |
| 10 October 2014  | Transferred to Wickham Point APOD.  |
| 2 January 2015   | Transferred to Bladin APOD.   |
| 26 February 2015 | Transferred to Wickham Point APOD.  |

## Visa applications/case progression

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| The Department of Immigration and Border Protection (DIBP) advised that Mr X and Ms Y are part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A. |  |
| 12 March 2014   | Mr X and Ms Y were issued with a letter inviting them to comment on the unintentional release of personal information through DIBP's website. <sup>1</sup> |
| 9 February 2015   | Referred on a ministerial intervention submission under s 195A for consideration for a Bridging visa.  |
| 4 March 2014  | The Minister declined to intervene under s 195A.   |

## Health and welfare

### Mr X

|                                   |  |
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| 9 January 2014                    | International Health and Medical Services (IHMS) advised that Mr X reported ongoing pain following a finger injury. An x-ray identified a fracture and he was referred to a specialist clinic. |
| 23 January 2014                   | Admitted to hospital for a surgical procedure on his finger and was provided with a plaster cast. IHMS advised that he received post-operative care from a hospital orthopaedic clinic.        |
| 7 February 2014                   | A DIBP Incident Report recorded that Mr X threatened self-harm. No further information was provided.   |
| 23 February 2014 and 7 March 2014 | DIBP Incident Reports recorded that Mr X refused food and fluids as a form of protest. No further information was provided.  |
| 5 March 2014                      | A DIBP Incident Report recorded that Mr X threatened self-harm if he was not reunited with Ms Y.   |
| 2 May 2014 and 30 July 2014       | DIBP Incident Reports recorded that Mr X threatened self-harm. No further information was provided.  |

### Ms Y

|                  |  |
|------------------|--|
| 16 December 2013 | A DIBP Incident Report recorded that Ms Y was found crying in a bathroom and holding a razor blade. No further information was provided. |
| 10 January 2014  | A DIBP Incident Report recorded that Ms Y self-harmed after receiving news from her home country. No further information was provided.   |
| 5 February 2014  | A DIBP Incident Report recorded that Ms Y threatened self-harm. No further information was provided.                                     |
| 9 April 2014     | Ms Y's pregnancy was confirmed and she was referred to a hospital antenatal clinic.  |

<sup>1</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

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|---------------|--|
| 2 May 2014    | A DIBP Incident Report recorded that Ms Y self-harmed by cutting her wrists. No further information was provided.  |
| 17 July 2014  | Ms Y was reviewed by the mental health team following an incident of self-harm. IHMS advised that she presented with symptoms of situational stress including depression and frustration. IHMS advised that she was provided with coping strategies and referred to a psychologist for supportive counselling. |
| 27 July 2014  | Ms Y was reviewed by a psychologist who noted that she was experiencing situational stress. Ms Y reported that she had declined a community detention placement as Mr X was not eligible to be transferred with her.   |
| December 2014 | Ms Y gave birth to her daughter <sup>2</sup> without complication.   |

### Detention incidents

|   |  |
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| DIBP Incident Reports recorded that Mr X was allegedly involved in multiple behavioural incidents, including threatening detention centre staff and displaying abusive and aggressive behaviour towards detention centre staff and other detainees. |  |
| 5 December 2013   | A DIBP Incident Report recorded that Mr X allegedly sexually harassed two female detainees. No further information was provided. |

### Ombudsman assessment/recommendation

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| <p>The Ombudsman notes that Mr X and Ms Y were detained on 11 August 2013 after arriving in Australia aboard SIEV <i>Marbury</i> and have been held in restricted detention for over two years with no processing of their protection claims.</p> <p>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 restricted detention for an indefinite period.</p> <p>The Ombudsman notes the Minister's recent Statements to Parliament, in which he advises that DIBP is progressing the substantial caseload of maritime arrivals, and will provide him with advice to assist his consideration of whether to lift the bar to allow these people to lodge a Temporary Protection visa application.</p> <p>The Ombudsman recommends that the Minister lift the bar under s 46A and processing of Mr X and Ms Y's protection claims commence as soon as possible.</p> |
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<sup>2</sup> Mr X and Ms Y's first child, Miss Z, was born in Australia in December 2014. She has been in detention for less than two years and is not subject to reporting under s 486N.