

**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	1974

Family details

Family members	Ms Y (wife)	Miss Z (daughter)	Master P (son)
Citizenship	Country A	Country A	Country A
Year of birth	1977	2005	2012

Ombudsman ID	1002287-O
Date of DIBP's reports	14 January 2016 and 14 July 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

19 August 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland ¹ aboard Suspected Illegal Entry Vessel (SIEV) 832 <i>Piedmont</i> . The family was transferred to Northern Immigration Detention Centre.
24 August 2013	Transferred to an Alternative Place of Detention (APOD), Christmas Island.
6 June 2014	Transferred to Nauru Regional Processing Centre (RPC). ²
1 November 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point APOD.
4 November 2014	Transferred to Melbourne Immigration Transit Accommodation.
21 December 2015	Transferred to community detention.

Visa applications/case progression

13 March 2014	The Department of Immigration and Border Protection (DIBP) notified the family of the unintentional release of personal information. ³
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¹ Following legislative amendment on 20 May 2013, all unauthorised maritime arrivals, including those who arrived on the Australian mainland or an 'excised offshore location' were barred from lodging a Protection visa application under s 46A.

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 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

1 November 2014	Mr X and his family were transferred from Nauru RPC to Australia for medical treatment.
15 December 2015	The Minister intervened under s 197AB to allow the family to reside in community detention.
16 March 2016	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

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X disclosed an extensive history of torture and trauma and receives ongoing psychological counselling and treatment for management of anxiety, major depressive disorder and post-traumatic stress disorder.</p> <p>On 15 June 2015 Mr X's specialist psychologist reported that the detention environment is harmful to his mental health as it reminds him of his traumatic past, he feels helpless and unable to protect his family and he fears being returned to Nauru RPC where he anticipates uncontrollable threats to his children. IHMS advised that Mr X's psychosocial functioning was observed to deteriorate significantly in the detention environment, limiting his ability to parent and function generally. Mr X's mental health was noted to improve after his transfer to community detention, but his psychologist stressed that Mr X and his family remain highly vulnerable and that it is likely that if the family was returned to restricted or offshore detention that Mr X's mental health would seriously deteriorate.</p> <p>IHMS further advised that Mr X received treatment for multiple ongoing physical health concerns including chronic pain in his knees, jaw, back, head and hand. Several of Mr X's ongoing physical health issues were noted to have stemmed from past trauma.</p>	
22 February 2011	A DIBP Incident Report recorded that Mr X refused food and fluid for 12 days.
22 February 2014 – 7 March 2014	A DIBP Incident Report recorded that Mr X refused food and fluid.
24 April 2015	A DIBP Incident Report recorded that Mr X self-harmed.

Ms Y

<p>IHMS advised that Ms Y disclosed a history of torture and trauma and receives ongoing specialist psychological counselling. In March 2016 she was noted to be suffering from low mood and stress because of the uncertainty surrounding her family's immigration status.</p> <p>Ms Y also received treatment for multiple ongoing physical health concerns including chronic neck and back pain, migraines and a benign cyst. In March 2016 she presented with an acute gynaecological issue and was referred for an urgent specialist appointment. At the time of IHMS's latest review in June 2016 Ms Y was still awaiting an appointment date.</p>	
January 2016	Ms Y gave birth to her daughter ⁴ without complication.

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.

⁴ Miss Q was born in Australia in January 2016 and detained on 22 January 2016. She has been in detention for less than two years and is not subject to reporting under s 486N.

Miss Z

IHMS advised that Miss Z has presented with nightmares, bedwetting, learning difficulties, short-term memory problems, irritability and loss of appetite. Miss Z's parents disclosed that she experienced torture and trauma on the boat journey to Australia and during her time in detention and requested that she attend specialist counselling sessions. She receives ongoing psychological counselling to manage symptoms of anxiety, an adjustment disorder and post-traumatic stress disorder.

In March 2015 Miss Z's paediatrician noted that restricted detention has had an adverse impact on Miss Z's mental health and general development and advised that her mental health issues are unlikely to be resolved by therapy while in restricted detention. Miss Z threatened suicide upon being told her family may be returned to Nauru RPC and a psychiatric review in September 2015 advised that Miss Z had reported symptoms of psychosis including hearing voices.

In November 2015 Miss Z's paediatric psychiatrist recommended she should not remain in restricted detention or be transferred back to Nauru RPC, as this would put her at an increased risk of severe mental health consequences and self-harm. It was advised in February 2016 that Miss Z's mental health had improved since being placed in community detention, but she continues to suffer from anxiety about the possibility of returning to Nauru RPC.

Miss Z also receives treatment for multiple ongoing physical health concerns including asthma, urinary incontinence and hair loss.

Master P

IHMS advised that Master P has presented with behavioural issues and receives ongoing psychological counselling to manage symptoms of an adjustment disorder. Master P's parents reported that he was suffering from anger, anxiety, social withdrawal and nightmares. In May 2015 a general practitioner recommended that Master P be released from restricted detention immediately due to the adverse impact it was having on his development and mental health. Since being transferred to community detention in December 2015 Master P has continued to experience behavioural and mental health issues and has been referred to receive further intensive mental health support.

Master P also receives treatment for multiple physical health concerns including growth and nutritional issues, constipation and latent tuberculosis.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and his family were detained on 19 August 2013 after arriving in Australia aboard SIEV *Piedmont* and have been held in detention for a cumulative period of over two and a half 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 the family'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 notes that Mr X and his family suffer from numerous significant mental and physical health conditions and notes the advice from Mr X's psychologist, Miss Z's psychiatrist and Master P's general practitioner that their mental health would significantly decline if they were returned to restricted detention or Nauru RPC. The Ombudsman further notes DIBP's advice that because the family was 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 his family's immigration status.