

**ASSESSMENT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the first s 486O assessment 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	Stateless, born in Country A
Year of birth	1980

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Stateless, born in Country A	Stateless, born in Country B
Year of birth	1978	2000

Family members	Miss P (daughter)	Master Q (son)
Citizenship	Stateless, born in Country B	Stateless, born in Country B
Year of birth	2003	2007

Ombudsman ID	1002457-O
Date of DIBP's reviews	25 July 2016 and 23 January 2017
Total days in detention	913 (at date of DIBP's latest review)

Detention history

19 December 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
14 February 2014	Transferred to Melbourne Immigration Transit Accommodation (ITA).
24 July 2014	Transferred to Wickham Point APOD.
30 July 2014	Transferred to Christmas Island APOD.
29 August 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
4 April 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Brisbane ITA.
17 August 2015	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 review under s 486N.

Visa applications/case progression

<p>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.</p> <p>Mr X and his family were returned to Australia for medical treatment on 4 April 2015.</p> <p>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.</p>	
12 March 2014	The department notified Mr X and his family of the unintentional release of personal information. ²
3 August 2015	The Minister intervened under s 197AB to allow the family to reside in community detention.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X was referred to an orthopedic specialist for treatment of an advanced degenerative joint condition.</p> <p>IHMS further advised that Mr X disclosed a history of torture and trauma and was closely monitored by a general practitioner (GP) following the death of his child in April 2016.</p>
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Ms Y

<p>IHMS advised that Ms Y was treated for nerve pain associated with a spinal disc protrusion. She was prescribed with medication, referred for physiotherapy and is awaiting orthopaedic review. In January 2015 Ms Y was confirmed to be pregnant. She developed gestational diabetes and required hospitalisation for three days. Routine antenatal checks identified significant health concerns with her baby and she was referred to a specialist who diagnosed severe cardiac abnormalities. The baby was born in August 2015 and was admitted to a cardiac intensive care unit. He passed away in April 2016.</p> <p>IHMS further advised that Ms Y was diagnosed with an adjustment disorder resulting from the stress associated with her complicated pregnancy. Her mental health was being monitored by a GP after the death of her child. The GP reported that she was coping well and had not displayed mental distress.</p>	
August 2015	Ms Y gave birth to her son. ³

Master Z

<p>IHMS advised that Master Z was treated for a number of physical health concerns including hepatitis B.</p>

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.

³ Mr X and Ms Y's fourth child, Master R was born in Australia in August 2015 and detained in April 2016. In April 2016 he passed away as a result of medical complications. He had been in detention for less than two years and was not subject to review under s 486N.

Miss P and Master Q

IHMS advised that Miss P and Master Q received treatment for a number of minor physical health concerns.

Other matters

Ms Y's eldest son, Mr S, arrived in Australia in December 2012 and was granted a Temporary Protection visa in August 2016.

Ms Y's sister, Ms T, and her children reside in the community on permanent visas.

Ombudsman assessment/recommendation

Mr X and his family were detained on 19 December 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and 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 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 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 their 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.