

**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 daughter, Ms Y, who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

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| Name | Mr X (and daughter) |
| Citizenship | Country A |
| Year of birth | 1964 |

Family details

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| Family members | Ms Y (daughter) |
| Citizenship | Country A |
| Year of birth | 1998 |

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| Ombudsman ID | 1002492-O |
| Date of DIBP's reports | 3 September 2016 and 6 March 2017 |
| Total days in detention | 914 (at date of DIBP's latest report) |

Detention history

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| 19 August 2013 | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 835 <i>Saginaw</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 11 March 2014 | Transferred to Nauru Regional Processing Centre (RPC). ¹ |
| 27 March 2015 | Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD. |
| 12 February 2016 | Transferred to community detention. |

Visa applications/case progression

Mr X and Ms Y 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 Ms Y 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.

Ms Y was returned to Australia for medical treatment on 27 March 2015, accompanied by Mr X.

The department has advised that under current policy settings Mr X and Ms Y are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of Ms Y's treatment.

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.

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| 27 January 2016 | The Minister intervened under s 197AB to allow Mr X and Ms Y to reside in community detention. |
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Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received supportive counselling after presenting with parenting concerns related to his daughter's mental health. In May 2016 he was prescribed with antidepressant medication and underwent a computed tomography scan after reporting low mood, poor memory and other concerns. The scans returned normal results, and in August 2016, a general practitioner (GP) advised that his mental health had improved and he had ceased his antidepressant medication.

IHMS further advised that Mr X received treatment for urological concerns and back pain and was awaiting a nephrology review.

Ms Y

IHMS advised that Ms Y received treatment for multiple complex mental health concerns, including depression and post-traumatic stress disorder, related to a history of sexual abuse prior to her arrival in Australia. While held in restricted detention, Ms Y was admitted to hospital and placed on Supportive Monitoring and Engagement observations at a high level on multiple occasions following serious incidents of threatened self-harm, self-harm and food and fluid refusal.

In January 2015 Ms Y was diagnosed with an eating disorder and a treating psychiatrist advised that she may require specialist treatment in Australia. She was placed on weight monitoring by the IHMS medical team and continued to be monitored by a psychiatrist.

Following her transfer to community detention, Ms Y attended regular psychiatric and psychological counselling and her antidepressant medication was monitored by a GP. A treating counsellor reported that she responded well to counselling and a GP noted that her antidepressant regime was effective.

IHMS further advised that Ms Y required treatment for multiple physical health concerns, including gynaecological issues and gall stones. She underwent a surgical procedure in September 2015 and continued to be monitored by a GP.

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| April 2015 | Admitted to the psychiatric unit of a hospital for treatment following an incident of attempted self-harm. |
| 8 April 2015 | An Incident Report recorded that during an interview Ms Y alleged that she had been sexually abused by service provider staff at Nauru RPC including during body searches by male staff members. The matter was referred to the police and child welfare authorities were notified. |
| 26 December 2016 | Ms Y was assessed as being clinically inappropriate for detention at an RPC as she had a history of low mood, self-harm and attempted suicide. IHMS advised that she requires ongoing mental health support and access to inpatient mental health care and would likely require admission to hospital if she was returned to an RPC. |

Other matters

Mr X and Ms Y arrived in Australia with Mr X's cousin, Mr Z, who is the subject of Ombudsman report 1002468-O.

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 19 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.

Mr X and Ms Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Mr X and Ms Y arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of Ms Y's 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 further notes Ms Y's history of self-harm and mental health concerns and advice from IHMS that she is clinically inappropriate for detention at an RPC as she requires ongoing mental health support.

The Ombudsman notes that under current policy settings Mr X and Ms Y 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 Ms Y's immigration status.