

**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 have remained in immigration detention for more than 30 months (two and a half years).

| | |
|----------------------|--|
| Name | Mr X (and wife) |
| Citizenship | Stateless (claimed), born in Country A |
| Year of birth | 1990 |

Family details

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

| | |
|--------------------------------|---------------------------------------|
| Ombudsman ID | 1002293-O |
| Date of DIBP's reports | 15 January 2016 and 15 July 2016 |
| Total days in detention | 912 (at date of DIBP's latest report) |

Detention history

| | |
|------------------|---|
| 5 December 2013 | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 867 <i>Yakutat</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 9 December 2013 | Transferred to Nauru Regional Processing Centre (RPC). ¹ |
| 19 January 2014 | Returned to Australia and re-detained under s 189(1). They were transferred to Brisbane Immigration Transit Accommodation. |
| 30 January 2014 | Transferred to Bladin APOD. |
| 23 May 2014 | Transferred to Wickham Point APOD. |
| 6 January 2015 | Transferred to Bladin APOD. |
| 26 February 2015 | Transferred to Wickham Point APOD. |
| 9 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

| | |
|---|---|
| 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. | |
| 19 January 2014 | Mr X and Ms Y were returned from Nauru RPC to Australia for medical treatment. |
| 12 March 2014 | DIBP notified Mr X and Ms Y of the unintentional release of personal information. ² |
| 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

International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and has been provided with specialist counselling.

Ms Y

IHMS advised that Ms Y received treatment for multiple complex mental health concerns related to her history of history of torture and trauma and incidents of self-harm. Ms Y was diagnosed with major depression, acopia, post-natal depression and anxiety and placed on Supportive Monitoring and Engagement observations on multiple occasions while in restricted detention. IHMS advised that a psychiatrist reported that they did not support her return to Nauru RPC because of the high risk of suicide.

Ms Y's pregnancy was confirmed in February 2015 and she was provided with additional support from the IHMS mental health team (MHT) after disclosing thoughts of self-harm and suicidal ideation. Following her transfer to community detention, Ms Y continued to be monitored by the community MHT and was referred for psychological counselling.

IHMS further advised that Ms Y received treatment for a range of physical health issues, including oesophageal reflux related to her pregnancy.

| | |
|-----------------|--|
| 19 January 2014 | DIBP advised that Ms Y was returned from Nauru RPC to Australia for medical treatment. IHMS reported that she underwent a medical procedure. |
| October 2015 | Ms Y gave birth to her daughter ³ without complication. |

² 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.

³ Miss Z was born in Australia in October 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and Ms Y were detained on 5 December 2013 after arriving in Australia aboard SIEV *Yakutat* 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 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 detention for an indefinite period.

The Ombudsman notes DIBP's advice that because Mr X and Ms Y were 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.

Further, the Ombudsman notes advice from IHMS that the psychiatrist did not support Ms Y's return to Nauru RPC because of the high risk of suicide.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X and Ms Y's immigration status.