

**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 immigration detention for a cumulative period of more than 24 months (two years).

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1984

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1987

Ombudsman ID	1002351-O
Date of DIBP's report	27 March 2016
Total days in detention	731 (at date of DIBP's report)

Detention history

19 August 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 832 <i>Piedmont</i> . They were transferred to Northern Immigration Detention Centre (IDC).
24 August 2013	Transferred to Christmas Island Alternative Place of Detention (APOD).
29 August 2013	Transferred to Christmas Island IDC.
22 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
30 August 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
31 August 2014	Transferred to Brisbane Immigration Transit Accommodation (ITA).
31 October 2014	Transferred to Wickham Point APOD.
6 January 2015	Transferred to Bladin APOD.
26 February 2015	Transferred to Brisbane ITA.
4 April 2015	Transferred to Wickham Point APOD.
19 April 2015	Transferred to Melbourne ITA.

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.

1 April 2016	The family ² was transferred to community detention.
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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.	
30 August 2014	Mr X and Ms Y were transferred from Nauru RPC to Australia for medical treatment.
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.
18 March 2016	Mr X and his family's case was referred on a ministerial submission for consideration under s 197AB of a community detention placement. The Minister agreed to intervene to allow Ms Y and Miss Z to reside in community detention, but declined to intervene in Mr X's case.
1 April 2016	DIBP advised that Mr X, Ms Y and Miss Z were transferred to community detention together.

Other legal matters

27 March 2016	DIBP advised that Mr X was involved in four incidents while in restricted detention which were referred to Victoria Police. Three of these matters were investigated and closed, and one incident remains under investigation.
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Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X suffers from major depression with psychotic episodes and an adjustment disorder. He is prescribed with medication to manage his condition and received regular supportive counselling from the mental health team. He required admission to a psychiatric hospital on two occasions and was placed on Supportive Monitoring and Engagement (SME) observations for extended periods after disclosing suicidal ideation. DIBP Incident Reports recorded that Mr X self-harmed on two occasions and threatened to self-harm on a further two occasions.</p> <p>Mr X has disclosed a history of torture and trauma and attended one offsite specialist counselling appointment, but declined to attend further offsite appointments, advising that the restraints used during transportation triggered memories of his traumatic past. In October 2015 he attended a specialist counselling appointment at Melbourne ITA. IHMS advised that Mr X reported that detention reminded him of his past experiences of torture and trauma.</p>	
30 August 2014	DIBP advised that Mr X was transferred from Nauru RPC to Australia for medical treatment.

² Mr X and Ms Y's daughter, Miss Z, was born in Australia in January 2016. She has been in detention for less than two years and is not subject to reporting under s 486N.

31 August 2014 – 28 October 2014	Admitted to a psychiatric hospital.
27 February 2015 – 3 April 2015	Admitted to a psychiatric hospital.
4 December 2015	IHMS advised that Mr X was taken to hospital by ambulance following an alleged assault. Computed tomography scans of his spine and brain identified no abnormalities.

Ms Y

<p>Ms Y reported a history of heart palpitations which had been managed with medication for six years. An echocardiogram showed no evidence of heart disease and her medication was ceased in October 2014.</p> <p>She was referred for a specialist obstetrics and gynaecology review following ongoing health issues. In June 2015 she was confirmed to be pregnant and was monitored by an obstetrician and gynaecologist throughout the pregnancy. She developed gestational diabetes and was provided with education about diet modification and prescribed with insulin. IHMS advised that Ms Y suffers from extensive mental health issues. She has presented with sleeping difficulties stemming from situational stress and anxiety and was diagnosed with panic disorder in February 2014. In January 2015 she was diagnosed with major depression and an adjustment disorder, which the psychiatrist noted to be related to her prolonged detention and her husband's mental health issues. She also disclosed a history of torture and trauma and was provided with specialist counselling.</p> <p>In February 2015 Ms Y expressed suicidal ideation, threatening that she and her husband would kill themselves if notified that they would be returned to Nauru RPC. She declined to be admitted to a psychiatric hospital and was placed on SME observations and prescribed with medication. She ceased her mental health medications in May and June 2015 of her own accord, but continued to attend regular supportive counselling.</p>	
28 March 2015	Transferred to the emergency department after being found in an unresponsive state having taken an overdose of sleeping tablets. She was discharged the same day after denying that she had intended to self-harm and guaranteeing her own safety.
January 2016	Ms Y gave birth to her daughter.

Detention incidents

<p>DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous minor behavioural incidents while in detention, including displaying threatening and aggressive behaviour towards detention centre staff and other detainees and creating disturbances.</p>	
4 December 2015	A DIBP Incident Report recorded that Mr X and another detainee allegedly assaulted a Serco officer, instigating a major physical altercation in which several detainees and Serco officers were injured. The DIBP Incident Report recorded that during the disturbance Mr X was restrained and 'once restrained [he] stopped resisting and became in an unconscious state.' He was transferred to hospital via ambulance.

Other matters

12 August 2015	Mr X lodged a complaint on behalf of his family with the Australian Human Rights Commission (AHRC). On 26 February 2016 DIBP provided a response to the AHRC. The matter remained ongoing at the time of DIBP's review.
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Information provided by Mr X and Ms Y

Ms Y sent a letter to the Ombudsman's office on 27 August 2014 from Nauru RPC claiming she and her husband had both developed serious mental health issues since being detained at Nauru RPC. She said her husband had begun talking to himself and thought invisible people were talking to him, and the doctors had no diagnosis for him. She herself was very stressed and worried about her husband and had become totally depressed. She further advised she had a heart condition and needs to have an echocardiography every six months, but had not received one yet at Nauru RPC.

Mr X and Ms Y were offered the opportunity to discuss their detention circumstances with Ombudsman staff at Melbourne ITA on 24 March 2016 but declined to do so.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and Ms Y 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 years with no processing 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 that Mr X and Ms Y both have multiple significant chronic health issues and further notes DIBP's advice that because they 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.

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