

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

<b>Name</b>	Mr X (and wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1983

**Family details**

<b>Family members</b>	Ms Y (wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1982

<b>Ombudsman ID</b>	1002458-O
<b>Date of DIBP's reviews</b>	23 July 2016 and 23 January 2017
<b>Total days in detention</b>	914 (at date of DIBP's latest review)

**Detention history**

26 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
16 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
14 January 2015	Returned to Australia and re-detained under s 189(1). Mr X and Ms Y were transferred to Brisbane Immigration Transit Accommodation.
24 March 2015	Transferred to Wickham Point APOD.
9 March 2016	Transferred to community detention.

**Visa applications/case progression**

<p>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) 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.</p> <p>Mr X and Ms Y were returned to Australia for medical treatment on 14 January 2015.</p> <p>The department has advised that under current policy settings they 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>
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<sup>1</sup> Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

24 February 2016	The Minister intervened under s 197AD to allow Mr X and his family <sup>2</sup> to reside in community detention.
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## Health and welfare

### Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X was referred to a specialist for a circulatory condition affecting both his legs. He was fitted with compression stockings and attended physiotherapy. Mr X is currently awaiting surgery for this condition.</p> <p>IHMS further advised that Mr X has a history of depression and detention fatigue and regularly engaged with the mental health team. He was prescribed with medication for depression and insomnia and continues to be monitored by a general practitioner (GP).</p>
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### Ms Y

<p>IHMS advised that Ms Y was treated for asthma and was prescribed with preventative medication. She was referred for an electrocardiogram for a post-pregnancy heart murmur and was reviewed for gynecological and pelvic concerns for which she required multiple physiotherapy sessions.</p> <p>IHMS further advised that Ms Y disclosed a history of torture and trauma and attended IHMS counselling. She reported symptoms of detention fatigue, anxiety and post-partum depression and was reviewed by a psychologist. She was prescribed with antidepressant medication and was placed on Supportive Monitoring and Engagement observations following an incident of self-harm associated with the possibility of being returned to Nauru RPC. Ms Y continues to be monitored by a GP.</p>	
10 May 2015	An Incident Report recorded that Ms Y was transported to hospital via ambulance.
10 August 2015	An Incident Report recorded that Ms Y self-harmed.
11 August 2015	An Incident Report recorded that Ms Y refused food and fluid in protest of her family's possible return to Nauru RPC.

<sup>2</sup> Mr X and Ms Y's child Master Z was born and detained in Australia in May 2015. He has been in detention for less than two years and is not subject to review under s 486N.

### **Ombudsman assessment/recommendation**

Mr X and Ms Y were detained on 26 July 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 with no processing of their protection claims.

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 their treatment.

The Ombudsman notes the advice from IHMS that Mr X and Ms Y have medical conditions that require ongoing 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 with concern that both Mr X and Ms Y reported ongoing depression and detention fatigue.

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.