

**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 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	1982

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1986

Ombudsman ID	1002353-O
Date of DIBP's report	29 March 2016
Total days in detention	732 (at date of DIBP's report)

Detention history

23 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 801 <i>Blossburg</i> . Mr X and Ms Y were transferred to an Alternative Place of Detention (APOD), Christmas Island.
9 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
13 September 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
14 September 2014	Transferred to Inverbrackie APOD.
3 December 2014	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
11 March 2016	Transferred to community detention.

Visa applications/case progression

13 September 2014	Mr X and Ms Y were returned to Australia from Nauru RPC for medical treatment.
24 February 2016	The Minister agreed to intervene under s 197AB of the Act to allow Mr X and Ms Y to reside in 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.

16 March 2016	The Department of Immigration and Border Protection (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.
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Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X was diagnosed with thalassemia trait and was provided with education about the condition. Mr X also reported ongoing feet and knee pain and was referred to physiotherapy for strengthening exercises and a podiatrist for supportive foot wear. In November 2015 Mr X was transferred to the emergency department for sudden onset abdominal pain and was diagnosed with an inguinal hernia. He awaits surgery for this condition.</p> <p>IHMS advised that Mr X has been provided with regular counselling for ongoing stress in relation to his family and their immigration pathway.</p>

Ms Y

<p>IHMS advised that Ms Y has had type 1 diabetes for the past 19 years and requires insulin injections as well as regular diabetic check-ups with health specialists. Ms Y has required multiple admissions to the emergency department for elevated blood sugar levels and it has been advised that she attributes her lack of emotional wellbeing to her inability to effectively manage her diabetes in the context of detention. Ms Y's treating endocrinologist stated on 18 November 2015 that the management of her diabetes would improve if her emotional wellbeing improved. IHMS further advised that Ms Y has received treatment for recurrent ear infections, gastritis, thyroid issues, back pain and wrist pain.</p> <p>IHMS advised that Ms Y has required treatment for anxiety and post-partum depression whilst in detention. Ms Y reported feeling anxious about the possibility of returning to Nauru RPC and being unable to concentrate on her health or her baby. Ms Y has received regular psychological counselling and has been prescribed with medication. She also attends specialist counselling sessions for her history of torture and trauma.</p>	
March 2015	Ms Y gave birth to her daughter ² without complication.

² Miss Z was born in Australia in March 2015 and has been in detention for less than two years. She is not subject to reporting under s 486N.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and Ms Y were detained on 23 July 2013 after arriving in Australia aboard SIEV *Blossburg* and have been held in detention for a cumulative period of over two 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 further 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.

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