

**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 family who have remained in immigration detention for a cumulative period of more than 24 months (two years).

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1983

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	1986	2011

Ombudsman ID	1002386-O
Date of DIBP's report	2 May 2016
Total days in detention	732 (at date of DIBP's report)

Detention history

18 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 834 <i>Reform</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
21 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
14 April 2014	Transferred to Christmas Island APOD.
23 May 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
3 January 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Brisbane Immigration Transit Accommodation.
13 January 2015	Transferred to Wickham Point APOD.
14 January 2015	Transferred to Nauru RPC.
14 February 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
18 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

3 January 2015	Mr X and his family were transferred from Nauru RPC to Australia for medical treatment.
23 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.
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.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X receives treatment for multiple physical health concerns including migraines, chronic sinusitis, and gastritis. He receives ongoing specialist treatment and monitoring to manage these conditions.</p> <p>IHMS further advised that Mr X disclosed a history of torture and trauma and receives psychological counselling for the management of his mental well-being.</p>	
18 November 2015	A DIBP Incident Report recorded that Mr X refused food and fluid.

Ms Y

<p>IHMS advised that Ms Y was returned to Australia for testing after presenting with lumps and a family history of cancer. Investigations established that the lumps were benign, but Ms Y was advised to undergo regular testing for this concern. She has also received specialist obstetrics treatment.</p> <p>IHMS further advised that Ms Y disclosed a history of torture and trauma and received specialist psychological counselling for the management of major depression, thoughts of self-harm, anxiety, complex post-traumatic stress disorder and an adjustment disorder. Ms Y received specialist attention and counselling and was prescribed with antidepressant medication. No further deterioration was reported after her transfer to community detention.</p>	
May 2015	Ms Y gave birth to her son ² without complication.
18 – 22 November 2015	A DIBP Incident Report recorded that Ms Y refused food and fluid.

Master Z

<p>IHMS advised that Master Z receives specialist care for the management of enuresis, attention deficit hyperactivity disorder, aggressive behaviour, anxiety, and sleep disturbance. Master Z has been prescribed medication to regulate his sleep patterns and has received therapy for his behavioural and developmental issues.</p> <p>In September 2015 Master Z's paediatrician recorded that his mental health and behavioural problems were a result of his prolonged detention and strongly recommended that the family be placed in community detention to improve his mental health.</p>	
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² Mr X and Ms Y's second child (name not provided) was born in Australia in May 2015 and has been in detention for less than two years. He is not subject to reporting under s 486N.

Other matters

14 March 2014	Mr X lodged a complaint with the Ombudsman's office concerning the standard of medical care provided at Christmas Island IDC. The complaint was investigated and on 9 December 2014 the Ombudsman notified DIBP that the investigation had been finalised.
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Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and his family were detained on 18 August 2013 after arriving in Australia aboard SIEV *Reform* 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 the family'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 the family was transferred to an RPC but returned to immigration detention in Australia for medical reasons the family remains 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 his family's immigration status.