

**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 wife 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	1979

Family details

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

Ombudsman ID	1002334-O
Date of DIBP's report	7 March 2016
Total days in detention	731 (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> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
9 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
23 August 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
14 November 2014	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
10 March 2016	The family ² was transferred to community detention.

Visa applications/case progression

23 August 2014	Mr X and Ms Y were transferred from Nauru RPC to Australia for medical treatment.
24 February 2016	The Minister intervened under s 197AB to allow the family 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.

² Mr X and Ms Y's son, Master Z 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.

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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Other legal matters

DIBP advised that Mr X is a plaintiff in ongoing court proceedings. No further information was provided.
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Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X was diagnosed with a medical condition after reporting a history of pain and bleeding. He was scheduled for surgery in February 2016 and was prescribed with pain relief medication while he awaited the procedure. Mr X also received treatment for reflux related to a stomach bacterial infection and other issues. He underwent a procedure in November 2015 and was scheduled for a further procedure in February 2016.</p> <p>IHMS advised that Mr X was diagnosed with an adjustment disorder in November 2015 which was noted to have been caused by his prolonged detention and uncertainty about his future. He was referred for counselling and prescribed with antidepressant medication.</p>

Ms Y

<p>IHMS advised that Ms Y was treated for acute gynaecological issues at Nauru RPC before being transferred to Australia for ongoing treatment. She was prescribed with medication and is monitored for this concern. On 30 September 2014 Ms Y was confirmed to be pregnant. She developed gestational diabetes and was closely monitored during her pregnancy.</p> <p>IHMS advised that Ms Y disclosed a history of torture and trauma for which she attended a specialist counselling session. In December 2015 Ms Y was diagnosed with major depressive disorder and anxiety in the context of her fears about returning to Nauru RPC. She was prescribed with antidepressant medication, provided with counselling, and closely monitored by the mental health team.</p>	
May 2015	Ms Y gave birth to her son without complication.
15 October 2015	A DIBP Incident Report recorded that Ms Y attempted self-harm.

Detention incidents

31 October 2015	A DIBP Incident Report recorded that Mr X alleged that another detainee physically assaulted Ms Y. No further information was provided.
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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.