

**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 30 months (two and a half years).

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1981

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	1983	2009

Ombudsman ID	1002315-O
Date of DIBP's reports	16 February 2016 and 16 August 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

26 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 812 <i>Pyriton</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
16 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
9 August 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point APOD.
9 April 2015	Transferred to Brisbane Immigration Transit Accommodation (ITA).
17 May 2015	Transferred to Wickham Point APOD.
1 February 2016	Transferred to Adelaide ITA.
3 February 2016	Transferred to Wickham Point APOD.
9 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

Mr X and his family arrived in Australia by sea after 19 July 2013 and were transferred to an RPC. The Department of Immigration and Border Protection (DIBP) has advised that Mr X and his family 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.

Mr X and his family were returned to Australia for medical treatment on 16 January 2014.

DIBP has advised that under current policy settings Mr X and his family 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.

26 February 2016

The Minister intervened under s 197AB to allow the family to reside in community detention.

Other legal matters

March 2015

DIBP advised that the police were notified after Mr X allegedly assaulted Ms Y. In April 2015 the police advised that no further investigation was required and the matter was finalised.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X attended psychological counselling and was prescribed with medication for the management of major depression, adjustment disorder and post-traumatic stress. Mr X was admitted to a psychiatric hospital on 9 April 2015 and the treating psychiatrist reported that he may experience detrimental mental health issues if he was returned to a detention centre environment. In June 2016 the IHMS psychologist advised that Mr X is unfit for return to Nauru RPC.

IHMS further advised that Mr X completed a course of treatment for latent tuberculosis and underwent a series of surgeries and orthopaedic review for a knee injury. Mr X was placed on a waiting list for additional knee surgery in February 2016.

9 April 2015 –
13 May 2015

Admitted to a psychiatric hospital.

Ms Y

IHMS advised that Ms Y reported a history of torture and trauma and attended ongoing psychological counselling for the management of depression. In June 2016 Ms Y presented with ongoing stress relating to family issues and the uncertainty of their immigration status. The psychologist advised that Ms Y's mental health would decline if she was returned to Nauru RPC, and that she requires ongoing psychological support and therapeutic intervention.

IHMS further advised that Ms Y was placed in isolation for treatment of hand, foot and mouth disease until resolved in February 2016. Ms Y also received treatment for ongoing gynaecological issues and was referred to a specialist with an appointment scheduled in July 2016.

29 April 2015 –
22 September 2015

DIBP Incident Reports recorded that Ms Y threatened self-harm on three occasions and self-harmed on two occasions.

Master Z

IHMS advised that Master Z received ongoing psychological counselling for the management of anxiety, behavioural problems, stress and trauma, with associated physical symptoms. His treating psychologist advised that Master Z continues to experience the effects of trauma associated with the journey to Australia and restricted detention, and that considerable counselling will be required for his mental health to improve. The psychologist strongly recommended that Master Z not be returned to restricted detention or Nauru RPC.

IHMS further advised that Master Z completed a course of treatment for latent tuberculosis and his diet is monitored to manage an inherited metabolic condition.

Detention incidents

18 August 2014	A DIBP Incident Report recorded that Master Z alleged that he had been assaulted by an adult. No further information was provided.
14 October 2015	A DIBP Incident Report recorded that Master Z was involved in a physical altercation with two other minor detainees at school.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and his family were detained on 26 July 2013 after arriving in Australia aboard *SIEV Pyriton* and have been held in detention for a cumulative period of over two and a half 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 notes DIBP's advice that because Mr X and his family 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 notes with serious concern the reported impact restricted detention previously had on the mental health of all family members, including seven-year old Master Z. The Ombudsman further notes consistent advice from IHMS psychiatrists that the mental health of all family members would further deteriorate if they were returned to an RPC.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of the family's immigration status.