

## 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 his family 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 family)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1973

### Family details

<b>Family members</b>	Ms Y (wife)	Miss Z (daughter)	Master P (son)
<b>Citizenship</b>	Country A	Country A	Country A
<b>Year of birth</b>	1972	2000	2004

<b>Ombudsman ID</b>	1002460-O
<b>Date of DIBP's reviews</b>	25 July 2016 and 25 January 2017
<b>Total days in detention</b>	915 (at date of DIBP's latest review)

### Detention history

9 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to an Alternative Place of Detention, Christmas Island.
19 November 2013	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
4 October 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Facility R.
19 January 2016	The family <sup>2</sup> was transferred to community detention.

### 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 (the department) 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 4 October 2014.

The department 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.

<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.

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

29 December 2015	The Minister intervened under s 197AB to allow the family to reside in community detention.
------------------	---

## Health and welfare

### Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for severe chronic back and nerve pain. He was referred for specialist review and was fitted with a back brace and prescribed with pain relief medication. Mr X was referred for hydrotherapy and physiotherapy and is awaiting further specialist review.</p> <p>IHMS further advised that Mr X engaged with the mental health team and was reviewed by a psychiatrist for the management of an adjustment disorder, depression and anxiety. Mr X disclosed a history of torture and trauma and attended specialist counselling. He continued to be monitored by a psychologist and general practitioner (GP).</p>	
15 April 2015	An Incident Report recorded that Mr X was transported to hospital via ambulance.

### Ms Y

<p>IHMS advised that Ms Y received treatment for minor health concerns and was prescribed pain relief medication for chronic migraines. Following a risk assessment Ms Y has been monitored for type 2 diabetes.</p>	
May 2015	Gave birth to her son without complication.

### Miss Z

<p>IHMS advised that Miss Z engaged with the mental health team for the management of anxiety associated with the family's possible return to Nauru RPC. Miss Z was transferred to hospital following a panic attack in November 2016. Her father reported concerns that she was isolating herself and had low energy and motivation. She disclosed a history of torture and trauma and attended specialist counselling. Miss Z's mental health continues to be monitored by a GP.</p> <p>IHMS further advised that Miss Z was referred for an echocardiogram following chest pains and an orthodontic assessment for ongoing dental concerns.</p>	
--	--

### Master P

<p>IHMS advised that Master P was referred for a mental health assessment following reports of nightmares and flashbacks relating to incidents which occurred while detained at Nauru RPC. He was referred for psychological counselling.</p> <p>IHMS further advised that Master P was diagnosed with a genetic blood disorder and continues to be monitored by a GP.</p>	
--	--

## Other matters

7 August 2014	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman regarding an alleged altercation with a detention centre staff member at Nauru RPC in December 2013. The complaint was finalised on 26 August 2015.
---------------	---

**Ombudsman assessment/recommendation**

Mr X and his family were detained on 9 September 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.

Mr X and his family were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they 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 Master P have medical conditions that require ongoing treatment and that Mr X and his children have ongoing mental health concerns.

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 the family's immigration status.