

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	1968

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	1980	2011

Ombudsman ID	1002229-O
Date of DIBP's reports	16 November 2015 and 16 May 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.
12 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
15 August 2013	Transferred to an APOD, Christmas Island.
26 March 2014	Transferred to Christmas Island IDC.
18 April 2014	Transferred to an APOD, Christmas Island.
16 May 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
6 September 2014	Returned to Australia and re-detained under s 189(1). The family were transferred to Wickham Point APOD.
6 January 2015	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
30 June 2015	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

12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X and his family of the unintentional release of personal information. ²
6 September 2014	Mr X and his family were transferred from Nauru RPC to Australia for medical treatment.
16 March 2016	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.
17 June 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 disclosed a history of torture and trauma and received psychological counselling for management of anxiety, depression, post-traumatic stress disorder and disturbed sleep. He was closely monitored by the IHMS mental health team (MHT) following incidents of self-harm and difficulty coping in restricted detention. No further mental health concerns were reported following his transfer to community detention.</p> <p>IHMS further advised that Mr X receives treatment for multiple physical health concerns, including chronic back pain, arthritis, hearing loss, nasal abnormalities and high cholesterol. He is currently awaiting a referral to an ear, nose and throat (ENT) specialist, neurologist and orthopaedic specialist for further assessment.</p>	
1 March 2014	A DIBP Incident Report recorded that Mr X refused food and fluid.

Ms Y

<p>IHMS advised that Ms Y received counselling from the IHMS MHT after presenting with anxiety and frustration related to her immigration pathway. No further mental health concerns were reported following her transfer to community detention.</p> <p>Ms Y is currently awaiting a referral to an ENT specialist after presenting with nasal abnormalities.</p>	
May 2015	Ms Y gave birth to her son ³ without complication.

² In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

³ Master Q was born in Australia in May 2015. He has been in detention for less than two years and is not subject to reporting under s 486N.

Master Z

IHMS advised that Master Z receives treatment and counselling for multiple related mental and physical health issues, including development regression, acute anxiety disorder, depression, lack of appetite and behavioural issues. He continues to be monitored by a paediatric specialist, psychologist, psychiatrist and a general practitioner. IHMS further advised that Mr X and Ms Y attend counselling to support them in caring for Master Z.

Other matters

19 May 2014	DIBP was notified that Mr X had lodged a complaint with the Australian Human Rights Commission (AHRC). DIBP provided its response on 24 July 2014. On 16 October 2014 the AHRC notified DIBP that Mr X and his family had withdrawn their complaint and the matter was closed.
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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 that without an assessment of Mr X and his 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 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 Master Z's treatment.

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