

## 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 Ms X and Mr Y who have remained in restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Ms X (and husband)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1986

### Family details

<b>Family members</b>	Mr Y (husband)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1980

<b>Ombudsman ID</b>	1002462-O
<b>Date of DIBP's reviews</b>	25 July 2016 and 27 January 2017
<b>Total days in detention</b>	913 (at date of DIBP's latest review)

### Detention history

20 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
8 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
23 August 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point Alternative Place of Detention.
3 October 2014	Transferred to Nauru RPC.
27 February 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
18 April 2015	Mr Y was transferred to a police watch house. Ms X remained at Wickham Point APOD.
19 April 2015	Mr Y was transferred to Yongah Hill Immigration Detention Centre (IDC).
29 April 2015	Ms X was transferred to Yongah Hill IDC and reunited with Mr Y.
5 June 2015	Transferred to Perth Immigration Residential Housing (IRH).
4 February 2016	Transferred to Perth IDC.
5 February 2016	Transferred to Perth IRH.
19 September 2016	Transferred to community detention.

<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.

## Visa applications/case progression

<p>Ms X and Mr Y 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 Ms X and Mr Y 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.</p> <p>Ms X and Mr Y were returned to Australia for medical treatment on 23 August 2014 and 27 February 2015.</p> <p>The department has advised that under current policy settings Ms X and Mr Y 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.</p>	
7 September 2016	The Minister intervened under s 197AB to allow Ms X and Mr Y to reside in community detention.

## Health and welfare

### Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X received treatment for multiple physical health concerns and was reviewed by a specialist for a lung condition. Ms X underwent investigative procedures following persistent abdominal pain, appendicitis and ovarian cysts and continued to be monitored by a general practitioner (GP).</p> <p>IHMS further advised that Ms X was reviewed by a psychiatrist and diagnosed with situational stress, anxiety and depression. Ms X was prescribed with medication and placed on Supportive Monitoring and Engagement (SME) observations following an incident of self-harm. She regularly engaged with the mental health team and continued to be monitored by a GP and psychologist.</p>	
25 April 2015	An Incident Report recorded that Ms X was transferred to hospital following an incident of self-harm.

### Mr Y

<p>IHMS advised that Mr Y received treatment for chronic back and leg pain and periodically required a wheelchair for mobility. His condition is monitored by a specialist and he attends physiotherapy and counselling for pain management. IHMS further reported that he received treatment for a fractured elbow, eczema and joint inflammation.</p> <p>IHMS further advised that Mr Y was reviewed by a psychiatrist and diagnosed with an adjustment disorder, detention fatigue, situational stress, anxiety and depression. He was prescribed with medication and placed on SME observations following a number of self-harm incidents. Mr Y attended regular counselling sessions with a psychologist and continued to be monitored by a GP.</p>	
11 March 2015 – 22 June 2016	Incident Reports recorded that Mr Y self-harmed on four occasions and threatened self-harm on five occasions.
1 May 2015	An Incident Report recorded that Mr Y threatened that he and his wife would harm themselves.

**Detention incidents**

11 March 2015 – 22 June 2016	Incident Reports recorded that Mr Y allegedly displayed aggressive behaviour toward detention centre staff on multiple occasions.
18 April 2015	Mr Y was transferred to a police watch house following his alleged involvement in a disturbance at Wickham Point APOD. The department advised that the incident was not investigated by police and the matter is now closed.
31 August 2015	An Incident Report recorded that Mr Y allegedly physically assaulted Ms X.

**Other matters**

1 May 2015	Mr Y lodged a complaint with the Australian Human Rights Commission. On 31 November 2016 Mr Y withdrew his complaint and the matter was closed.
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**Ombudsman assessment/recommendation**

<p>Ms X and Mr Y were detained on 20 July 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.</p> <p>Ms X and Mr Y were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and Mr Y arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.</p> <p>The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose. The Ombudsman further notes with concern that both Ms X and Mr Y are being treated for significant mental health concerns.</p> <p>The Ombudsman notes that under current policy settings Ms X and Mr Y 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.</p> <p>The Ombudsman recommends that priority is given to resolving Ms X and Mr Y's immigration status.</p>
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