

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Mr X and Ms Y 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 wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1985

### Family details

<b>Family members</b>	Ms Y (wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1985

<b>Ombudsman ID</b>	1002497-O
<b>Date of DIBP's reviews</b>	5 September 2016 and 10 March 2017
<b>Total days in detention</b>	916 (at date of DIBP's latest review)

### Detention history

26 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.
4 August 2013 – 5 August 2013	Transferred twice between an APOD, Christmas Island and Christmas Island Immigration Detention Centre.
16 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
27 February 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Facility B.
21 November 2015 – 5 February 2016	Transferred three times between various immigration detention facilities.
27 May 2016	Transferred to community detention.

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<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

Mr X and Ms 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 they 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 Ms Y were returned to Australia for medical treatment on 27 February 2015.

The department has advised that under current policy settings they 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.

5 May 2016	The Minister intervened under s 197AB to allow Mr X and Ms Y to reside in community detention.
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## Health and welfare

### Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for an adjustment disorder, anxiety and a history of torture and trauma. In February 2015 he self-harmed by ingesting a foreign object and was referred to the mental health team and placed on Supportive Monitoring and Engagement (SME) observations at a high level. In November 2015 he reported anxiety and stress at the responsibility of caring for his wife who suffers from a personality disorder. He was offered counselling and regularly engaged with a psychologist. In December 2015 he was prescribed with medication for anxiety. In January 2016 he attended a further specialised counselling session to assist with stress reduction and to develop coping strategies and improve the management of his mental health. In February 2016 he was reviewed by a psychiatrist and diagnosed with stress disorder relating to detention fatigue. His anxiety episodes were managed with medication and ongoing mental health support. Following his transfer to community detention he did not raise any mental health concerns.

IHMS further advised that Mr X received treatment for physical health concerns including muscle injury, a nasal septum disorder and back pain.

15 January 2015	An Incident Report recorded that Mr X refused food and fluid. IHMS advised the matter was resolved on 17 January 2015.
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26 March 2015	An Incident Report recorded that Mr X was allegedly assaulted by Ms Y.
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### Ms Y

IHMS advised that Ms Y has a history of mental health issues which she did not disclose until 11 February 2014, as she was concerned it could affect her immigration case. She was subsequently provided with specialist treatment for multiple complex mental health concerns, including borderline personality disorder and adjustment disorder with depression and anxiety.

During her time in immigration detention facilities Ms Y was placed on SME observations on a number of occasions following threats of self-harm and suicidal ideation. In December 2016 she disclosed a history of self-harm and intentions of suicide if she was returned to an RPC and reported that despite receiving ongoing counselling, her mental health was deteriorating. In January 2017 a psychiatrist noted improvements in her mental state but reported that she continued to suffer from a severe depressive illness. IHMS advised that her condition continued to be monitored by a psychiatrist.

IHMS further advised that Ms Y received treatment for physical health matters including gastrointestinal issues and migraine headaches.

15 January 2014	An Incident Report recorded that Ms Y refused food and fluid.
16 March 2015 – 29 July 2015	Incident Reports recorded that Ms Y self-harmed and threatened self-harm on multiple occasions whilst being held in restricted detention.

#### **Detention incidents**

26 March 2015 – 21 January 2016	Incident Reports recorded that while in an immigration detention facility Mr X was allegedly involved in several minor behavioural incidents including property damage, involvement in disturbances, and displaying aggressive behaviour towards detention centre staff.
26 March 2015 – 9 May 2016	Incident Reports recorded that while in an immigration detention facility Ms Y was allegedly involved in several minor behavioural incidents including disturbances, assaulting her husband and showing aggression towards Serco officers.
15 April 2015	Mr X was allegedly involved in a disturbance involving many detainees breaking and damaging property. The matter was referred to the police for further investigation. The police subsequently advised that the matter would not be investigated.

#### **Ombudsman assessment/recommendation**

Mr X and Ms Y were detained on 26 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 with no processing of their protection claims.

They 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 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 notes the advice from IHMS that Mr X and Ms Y have medical conditions that require ongoing treatment and that Ms Y has been diagnosed with borderline personality disorder and continues to suffer from a severe depressive illness.

The Ombudsman notes that under current policy settings Mr X and Ms 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.

**The Ombudsman recommends that priority is given to resolving Mr X and Ms Y's immigration status.**