

**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 24 months (two years).

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1973

Family details

Family members	Ms Y (wife)	Ms Z (daughter)	Master P (son)
Citizenship	Country A	Country A	Country A
Year of birth	1980	1997	2004

Ombudsman ID	1002339-O
Date of DIBP's report	11 March 2016
Total days in detention	730 (at date of DIBP's report)

Detention history

27 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 840 <i>Xanadu</i> . The family were transferred to an Alternative Place of Detention (APOD), Christmas Island.
29 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
3 January 2014	Transferred to Northern IDC.
14 February 2014	Transferred to Christmas Island IDC.
21 February 2014	Transferred to Christmas Island APOD and then to Nauru Regional Processing Centre (RPC). ¹
6 September 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
7 September 2014	Transferred to Brisbane Immigration Transit Accommodation.
7 August 2015	Transferred to Wickham Point APOD.
9 December 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

6 September 2014	Mr X and his family were returned to Australia from Nauru RPC for medical treatment.
23 August 2015	Mr X and his family were mistakenly referred on a ministerial submission for consideration to lift the s 46A bar.
25 August 2015	The Minister lifted the bar under s 46A to allow Mr X and his family to lodge a temporary visa application.
9 September 2015	The Minister exercised his power under s 46A(2c) to revoke the determination lifting the s 46A bar for Mr X and his family.
26 November 2015	Mr X and his family's case was referred on a ministerial submission for consideration under s 197AB of a community detention placement.
1 December 2015	The Minister intervened under s 197AB to allow Mr X and his family to reside in community detention.
16 March 2016	The Department of Immigration and Border Protection (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.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X reported a history of a traumatic jaw fracture that resulted in dental and gum issues and pain. He was referred to a specialist and placed on a surgical waiting list. Mr X was also provided with treatment for chronic back pain, and other physical health issues.

Mr X disclosed a history of torture and trauma and attended multiple specialist counselling sessions. His counsellor diagnosed him with post-traumatic stress disorder and recommended ongoing counselling. Mr X also presented with sleeping difficulties and low mood relating to his stress about his family's mental health issues, prolonged detention and dental issues. Mr X was prescribed with a trial of antidepressant medication, but declined to continue taking it. Since being transferred to community detention he has been monitored by a general practitioner (GP).

Ms Y

IHMS advised that Ms Y was provided with support and treatment after suffering two miscarriages. She received further treatment relating to dental pain and was treated for elevated hormone levels.

During her induction health assessment Ms Y disclosed a history of severe postnatal depression, episodes of psychosis and suicide attempts. She was recommenced on prescribed mental health medication and frequently reviewed by the mental health team. In September 2013 Ms Y was reviewed by a psychiatrist and diagnosed with bipolar disorder, for which she required hospitalisation as an involuntary patient following an acute manic episode. Ms Y further disclosed a history of torture and trauma, for which she attended multiple specialist counselling sessions. She has been referred for a GP review following her transfer to community detention.

19 August and 20 August – 9 September 2015	Ms Y was admitted to hospital as an involuntary patient under the <i>Mental Health and Related Services Act 2004</i> .
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Ms Z

IHMS advised that Ms Z has required ongoing review and management for significant mental health issues. She has been diagnosed with an adjustment disorder, anxiety, depression and a personality disorder and while in restricted detention she self-harmed and threatened self-harm on numerous occasions, sometimes requiring hospitalisation. Ms Z was prescribed with medication and provided with psychological counselling. While in restricted detention she was closely monitored by the mental health team and placed on high Supportive Monitoring and Engagement observations as required. Since being transferred to community detention her mental health has been monitored by a GP and she attends ongoing counselling sessions.	
12 October 2014 – 30 December 2014	Ms Z was admitted to a psychiatric hospital for treatment of depression.
9 January 2015 and 11 August 2015	DIBP Incident reports recorded that Ms Z refused food and fluid on two occasions.
21 September 2015	IHMS advised that Ms Z ingested an unknown medication and was transferred to hospital. The hospital advised that she refused to engage with staff and expressed concern that she may continue to be a risk to herself upon discharge.

Master P

IHMS advised that Master P underwent surgery for a medical condition in October 2014. He contracted a superficial post-surgical infection and was provided with treatment. IHMS further advised that Master P has no diagnosed mental health issues, but due to the extensive mental health support required by his family members he has had routine mental health assessments.	
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Ombudsman assessment/recommendation

<p>The Ombudsman notes that Mr X and his family were detained on 27 August 2013 after arriving in Australia aboard SIEV <i>Xanadu</i> and have been held in detention for over two years with no processing of their protection claims.</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 detention may pose. 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.</p> <p>The Ombudsman notes the importance of maintaining accurate records, particularly when these records are used to inform decision about an individual’s immigration status. The Ombudsman notes with concern that Mr X and his family had the s 46A bar lifted and subsequently replaced because of an administrative error.</p> <p>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 their treatment.</p> <p>The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X and his family’s immigration status.</p>
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