

**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 Ms Y who have remained in immigration detention for a cumulative period of more than 24 months (two years).

Name	Mr X (and wife)
Citizenship	Country A
Year of Birth	1982

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of Birth	1990

Ombudsman ID	1002394-O
Date of DIBP's report	7 May 2016
Total days in detention	730 (at date of DIBP's report)

Detention history

10 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 828 <i>Lapine</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
20 August 2013	Transferred to Christmas Island Immigration Detention Centre.
31 January 2014	Transferred to Christmas Island APOD.
2 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
1 November 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
6 January 2015	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
13 January 2016	Transferred to community detention.

Visa applications/case progression

1 November 2014	Mr X and Ms Y were transferred from Nauru RPC to Australia for medical treatment.
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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.

22 December 2015	The Minister intervened under s 197AB to allow the family ² 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

<p>International Health and Medical Services (IHMS) advised that Mr X receives treatment for multiple physical health concerns including knee pain, eye conditions, hypothyroidism, migraines and hair loss. IHMS further advised that Mr X disclosed a history of torture and trauma and attended specialist counselling sessions. He has been prescribed with antidepressant medication and continues to receive psychological counselling and support.</p>

Ms Y

<p>IHMS advised that Ms Y reported to have been diagnosed with a heart condition prior to her arrival in Australia, and was transferred to hospital on two occasions after presenting with heart palpitations and chest pain. She was referred to a cardiologist for treatment and investigative testing. IHMS advised that she is awaiting a referral to a local cardiologist for further review, following her transfer to community detention.</p> <p>In November 2014 Ms Y presented with depression, insomnia, anxiety and panic attacks and was prescribed with antidepressant medication. She also disclosed a history of torture and trauma for which she attended specialist counselling. In February 2016 Ms Y presented to her community general practitioner with continuing symptoms of depression and anxiety. She was referred to a psychologist, and IHMS advised that at the time of its report she was waiting to be allocated an appointment date.</p>	
December 2015	Ms Y gave birth to her daughter without complication.

Other matters

23 March 2015	The Ombudsman's office received a complaint from Ms Y about the medical treatment she received at Nauru RPC and upon her return to Australia. The complaint was investigated and on 11 June 2015 it was closed.
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² Mr X and Ms Y's daughter, Miss Z was born in Australia in December 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and Ms Y were detained on 10 August 2013 after arriving in Australia aboard SIEV *Lapine* and have been held in detention for a cumulative period of over two years with no processing of their protection claims.

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 their 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 Ms Y 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.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of their immigration status.