

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 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	Stateless, born in Country A
Year of birth	1975

Family details

Family members	Ms Y (wife)	Master Z (son)	Miss P (daughter)
Citizenship	Stateless, born in Country A	Stateless, born in Country B	Stateless, born in Country C
Year of birth	1987	2011	2013

Ombudsman ID	1002533-O
Date of DIBP's reviews	18 October 2016 and 21 April 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

20 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
16 May 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
18 May 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Brisbane Immigration Transit Accommodation.
19 May 2015	Transferred to Wickham Point APOD.
24 March 2016	Transferred to community detention.

Visa applications/case progression

Mr X and his family 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 Mr X and his family 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 his family were returned to Australia for medical treatment on 18 May 2015.

The department has advised that under current policy settings Mr X and his family 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.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

12 March 2014	The department notified Mr X and his family of the unintentional release of personal information. ²
23 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for chronic back pain and continued to be monitored by a general practitioner.

Ms Y

IHMS advised that Ms Y received antenatal care.

August 2015	Ms Y gave birth to her daughter ³ without complication.
-------------	--

Master Z

IHMS advised that Master Z was diagnosed with an inherited blood disorder and required regular pathology testing to monitor his condition.

Miss P

IHMS advised that Miss P received specialist treatment for tuberculosis and continued to be monitored as per state policy.

Ombudsman assessment/recommendation

Mr X and his family were detained on 20 October 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.

Mr X and his family were transferred to an RPC and returned to Australia for medical treatment. The department advised that because the family 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 that under current policy settings Mr X and his family are not eligible to have their protection claims assessed in Australia and that without an assessment of the family's claims it appears likely they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving the family's immigration status.

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

³ Miss Q was born in Australia in August 2015 and detained on 17 August 2015. She has been in detention for less than two years and is not subject to review under s 486N.