

**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 30 months (two and a half years).

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1972

Family details

Family members	Ms Y (wife)	Master Z (son)	Master P (son)
Citizenship	Country A	Country A	Country A
Year of birth	1980	2000	2005

Ombudsman ID	1002330-O
Date of DIBP's reports	29 February 2016 and 27 August 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

24 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 805 <i>Fruitdale</i> . The family were transferred to an Alternative Place of Detention, Christmas Island.
20 August 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
26 March 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Brisbane Immigration Transit Accommodation.
15 July 2014 – 26 February 2015	Transferred three times between various immigration detention facilities.
2 March 2016	Transferred to community detention.

Visa applications/case progression

26 March 2014	Mr X and his family were transferred from Nauru RPC to Australia for medical treatment.
---------------	---

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.

10 July 2015	Mr X initiated proceedings in the High Court (HC) seeking a declaration that, amongst other things, Australia's involvement in regional processing in Nauru was unlawful. The Department of Immigration and Border Protection (DIBP) stated that Mr X's proceedings were related to the HC case decided in favour of the Commonwealth on 3 February 2016. ² DIBP advised on 29 February 2016 that the HC was yet to make orders in relation to Mr X's proceedings.
3 February 2016	The family's representative requested ministerial intervention under ss 197AB and 198AE for a community detention placement and for exemption from transfer to an RPC.
23 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.
16 March 2016	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.
27 August 2016	DIBP advised that the family has undergone a Refugee Status Determination and that the assessment has been sent to the Government of Nauru. DIBP stated the matter would not be finalised until the family returned to Nauru.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X was diagnosed with and received treatment for an adjustment disorder with cluster B personality and anger issues. He also disclosed a history of torture and trauma but declined specialist counselling.

While in restricted detention Mr X received supportive counselling from the mental health team. Also while in restricted detention a DIBP incident report recorded that Mr X threatened self-harm by indicating he would jump from the first floor of a building.

Since Mr X's transfer to community detention IHMS advised that the community general practitioner (GP) has not documented any ongoing or acute mental health issues.

IHMS further advised that Mr X received treatment for multiple physical health concerns including asthma, a previous Achilles tendon rupture, and gout.

Mr X is awaiting an appointment with a hospital eye clinic for a cataract/glaucoma.

He was also referred to an ear, nose and throat clinic at a hospital for partial hearing loss but was transferred to the community before an appointment was scheduled. IHMS stated that Mr X has not subsequently raised any further concerns with his GP.

² *Plaintiff M68/2015 v Minister for Immigration and Border Protection & Ors* [2016] HCA 1.

Ms Y

IHMS advised that Ms Y was diagnosed with and received treatment and counselling for mental health conditions including anxiety and a major depressive disorder. She was admitted to a psychiatric hospital in March 2014 and was also seen by a hospital emergency department in September 2015 where she presented with symptoms of severe anxiety and depression and expressed the wish to die.

Mental health professionals later expressed different opinions in relation to Ms Y's mental health.

A DIBP Incident report recorded that while in restricted detention Ms Y attempted self-harm after a change in her medication and was transported to hospital.

On 22 July 2016 IHMS advised she was awaiting an appointment with a psychiatrist and remained on antidepressant medication with ongoing support from her community GP.

IHMS further advised that Ms Y received treatment for physical health concerns including abdominal and pelvic pain, a multinodular thyroid, gastric reflux, and neck, back and shoulder pain. In June 2015 she underwent successful thyroid surgery.

Whilst in restricted detention Ms Y was due to attend a hospital pain clinic but was transferred to community detention in another location and was unable to attend the appointment. She was then managed by her community GP and prescribed with pain relief medication.

Master Z

IHMS advised that Master Z was diagnosed with reactive depression and displayed depressive symptoms. He received supportive counselling. The condition was later reported to have resolved.

Master P

IHMS advised that Master P presented with behavioural issues including persistent anger, low motivation, negative cognitions and anxiety regarding his family's situation. A psychiatrist offered him a trial of a medication which he declined. A paediatrician documented that his nail biting and teeth grinding were symptoms of anxiety.

No further issues were identified at a mental health assessment in January 2016. On 25 July 2015 IHMS advised that there had been no further reports of behavioural issues or anxiety.

IHMS further advised that Master P received treatment from a GP and a paediatrician for a digestive issue.

Detention incidents

Mr X

DIBP Incident Reports recorded that Mr X was allegedly involved in a number of behavioural incidents of a minor nature whilst he was held in restricted detention.

27 December 2014

A DIBP Incident Report recorded that Mr X allegedly threatened detention facility staff with an improvised weapon.

Ms Y

15 April 2015

A DIBP Incident Report recorded that Ms Y was allegedly involved in a major disturbance in which detainees broke and damaged property.

Other matters

16 March 2015	Mr X lodged a complaint the Commonwealth Ombudsman's office about his wife's health concerns and related matters. After investigation the complaint was finalised on 20 May 2015.
---------------	---

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and his family were detained on 24 July 2013 after arriving in Australia aboard SIEV *Fruitdale* and have been held in detention for a cumulative period of over two and a half years.

The Ombudsman notes that the family have undergone a Refugee Status Determination which has been sent to the Government of Nauru and that DIBP has advised the assessment will not be finalised until the family returns to Nauru.

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 finalisation of Mr X and his family's claims to determine if they are owed protection, it appears likely that they will remain in detention for an indefinite period.

The Ombudsman further notes DIBP's advice that because the 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.

The Ombudsman also notes that at the time of DIBP's latest review the family was awaiting the outcome of judicial review and the outcome of a request for ministerial intervention under s 198AE for exemption from transfer back to an RPC.

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