

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

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1985

Family details

Family members	Ms Y (wife)	Miss Z (daughter)
Citizenship	Country A	Country A
Year of birth	1986	2010

Ombudsman ID	1002495-O
Date of DIBP's reviews	4 September 2016 and 9 March 2017
Total days in detention	916 (at date of DIBP's latest review)

Detention history

13 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family were transferred to an Alternative Place of Detention (APOD), Christmas Island.
3 May 2014	Transferred to Wickham Point APOD.
4 May 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 May 2015	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
15 February 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 27 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.

March 2014	The department notified Mr X and his family of the unintentional release of personal information. ²
27 January 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 was diagnosed with reactive depression in April 2014. In July 2015 he was prescribed with sleeping medication after disclosing feelings of low mood, sleeping issues and frequent anxiety, in the context of frustration at the immigration process.

Ms Y

IHMS advised that in December 2015 Ms Y was diagnosed with postnatal depression and received counselling and treatment. In December 2016 her community general practitioner (GP) submitted a request for a mental health care plan to manage anxiety and depression.

IHMS further advised that Ms Y received treatment for physical health matters including gynaecological issues, weight management, and osteoarthritis. Her GP referred her to an orthopaedic surgeon and an appointment remained pending at the date of IHMS's latest report.

September 2015	Ms Y gave birth to her daughter without complication. ³
9 March 2017	Ms Y was reported to be pregnant with the couple's third child, due in May 2017. IHMS advised that she would need to be closely monitored in the post-natal period of the pregnancy for signs of deteriorating mental health.

Miss Z

IHMS advised that Miss Z has been diagnosed with anxiety and an attachment disorder. In March 2014 she began to experience incontinence, which was linked to her behavioural issues and anxiety. In November 2015 Miss Z's psychiatrist noted that her behavioural issues had improved since her family returned from Nauru RPC.

Miss Z continued to present with low mood, difficulty sleeping and incontinence and in March 2016 she was placed on a mental health care plan and referred to a psychologist and a paediatrician. Miss Z attended regular counselling sessions in which she disclosed to her psychologist that she was afraid of being sent back to restricted detention.

IHMS further advised that Miss Z received treatment for physical health concerns including abdominal cramps. She was admitted to an emergency department in November 2016 with acute diarrhoea and vomiting. She was subsequently diagnosed with gastroenteritis.

² In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report 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 P was born in Australia in September 2015 and detained on 15 September 2015. She has been in detention for less than two years and is not subject to review under s 486N.

Ombudsman assessment/recommendation

Mr X and his family were detained on 13 August 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.

The 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 the advice from IHMS that family members have medical conditions that require ongoing 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 the family 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 the department expedite the resolution of the family's immigration status.