

## 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).

|                      |                   |
|----------------------|-------------------|
| <b>Name</b>          | Mr X (and family) |
| <b>Citizenship</b>   | Country A         |
| <b>Year of birth</b> | 1978              |

### Family details

|                       |             |                |
|-----------------------|-------------|----------------|
| <b>Family members</b> | Ms Y (wife) | Master Z (son) |
| <b>Citizenship</b>    | Country A   | Country A      |
| <b>Year of birth</b>  | 1988        | 2012           |

|                                |                                       |
|--------------------------------|---------------------------------------|
| <b>Ombudsman ID</b>            | 1002226-O                             |
| <b>Date of DIBP's reports</b>  | 17 November 2015 and 13 May 2016      |
| <b>Total days in detention</b> | 912 (at date of DIBP's latest report) |

### Detention history

|                  |   |
|------------------|---|
| 23 July 2013     | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 801 <i>Blossburg</i> . The family were transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 25 July 2013     | Transferred to Christmas Island Immigration Detention Centre.   |
| 15 August 2013   | Transferred to Construction Camp APOD, Christmas Island.  |
| 16 May 2014      | Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>   |
| 6 September 2014 | Returned to Australia for medical treatment and re-detained under s 189(1). The family were transferred to Wickham Point APOD.  |
| 5 December 2014  | Transferred to Bladin APOD.   |
| 26 February 2015 | Transferred to Wickham Point APOD.  |
| 9 March 2016     | Transferred to community detention.   |

### Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Mr X and his family are part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A.

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

|                  |   |
|------------------|---|
| 13 March 2014    | DIBP notified Mr X and his family of the unintentional release of personal information. <sup>2</sup>  |
| 24 February 2016 | The Minister intervened under s 197AB to allow the family to reside in community detention.   |
| 10 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. |

## Health and welfare

### Mr X

|  |   |
|--|---|
| <p>International Health and Medical Services (IHMS) advised that Mr X was treated for recurrent ear infections. He was referred to a specialist and underwent a procedure but did not attend two follow-up appointments. IHMS advised it made another specialist referral but since then Mr X has been transferred to community detention in another state and requires a new referral.</p> <p>IHMS also advised that while in restricted detention the mental health team (MHT) provided Mr X with regular support concerning his son's autism diagnosis.</p> |   |
| 21 March 2015  | He disclosed a history of torture and trauma. IHMS advised that he attended group therapy sessions as needed. |

### Ms Y

|   |  |
|---|--|
| <p>IHMS advised that Ms Y was treated for chronic mental health issues related to her detention including major depression, anxiety and insomnia with prescribed medication and counselling. She was regularly reviewed by an IHMS psychologist and psychiatrist.</p> <p>IHMS advised that a psychiatric hospital admission had been recommended but Ms Y had declined. She had been placed on intermittent Supportive Monitoring and Engagement observations (dates not provided) following concerns for her safety and was supported by the MHT prior to being transferred to community detention.</p> <p>IHMS advised that it had organised referrals to a community mental health team and private psychiatrist to continue her treatment in community detention.</p> |  |
| January 2015  | She gave birth to her son. <sup>3</sup>  |
| 6 July 2015   | Ms Y disclosed a history of torture and trauma but declined specialist counselling.  |
| 1 April 2016  | IHMS advised that Ms Y was referred for a gastroscopy for gastric reflux but as she has been transferred to community detention she requires a new referral. |

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

<sup>3</sup> Master Q was born in Australia in January 2015. He has been in detention for less than two years and is not subject to reporting under s 486N.

*Master Z*

IHMS reported that Master Z was treated for delayed speech and behavioural issues. Following a paediatric review he was diagnosed with autistic spectrum disorder and the paediatrician recommended that Master Z be removed from the restricted detention environment.

IHMS reported that Master Z will require ongoing paediatric review and speech, behavioural and occupational therapy to manage his condition. IHMS advised that it has been liaising with Master Z's support services in the community to ensure he is linked to the required services.

IHMS also noted that because of the services Master Z requires to manage his condition, he is not a suitable candidate for offshore processing.

**Other matters**

|              |   |
|--------------|---|
| 10 June 2015 | DIBP received a complaint from the Australian Human Rights Commission on behalf of Mr X and his family. DIBP provided a response on 20 October 2015 and the matter remains ongoing. |
| 13 May 2016  | DIBP advised that Mr X is a plaintiff in ongoing court proceedings. No further information was provided.  |

**Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X and his family were detained on 23 July 2013 after arriving in Australia aboard *SIEV Blossburg* and have been held in detention for a cumulative period of over two and a half 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 the 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.

The Ombudsman further notes DIBP's advice that because the family was 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 notes that IHMS has advised that Master Z is not a suitable candidate for offshore processing due to the services he requires to manage his autistic spectrum disorder. The Ombudsman also notes that IHMS reported that Ms Y has chronic mental health issues related to her detention which require ongoing management.

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