

**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 wife who have remained in immigration detention for a cumulative period of more than 30 months (two and a half 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	1992

Ombudsman ID	1002331-O
Date of DIBP's reports	29 February 2016 and 28 August 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

6 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 816 <i>Wetumpka</i> . The couple was transferred to an Alternative Place of Detention (APOD), Christmas Island.
7 February 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
1 September 2014	Returned to Australia and re-detained under s 189(1). The couple was transferred to Brisbane Immigration Transit Accommodation.
7 August 2015	Transferred to Wickham Point APOD.
9 March 2016	Transferred to community detention.

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.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Mr X and Ms Y 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.	
March 2014	DIBP notified Mr X and Ms Y of the unintentional release of personal information. ²
1 September 2014	Mr X and Ms Y were transferred from Nauru RPC to Australia for medical treatment.
5 February 2016	The couple's representative requested ministerial intervention under ss 197AB and 198AE for a community detention placement and for exemption from transfer back to an RPC.
24 February 2016	The Minister intervened under s 197AB to allow Mr X and Ms Y 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.
28 August 2016	DIBP advised that Mr X and Ms Y's ministerial intervention request under s 198AE remains ongoing.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment and counselling for multiple mental health concerns including a past history of alcohol and drug dependence, a history of torture and trauma, depression, poor sleep, restlessness, panic attacks, long-standing personality issues, thoughts of suicide and ongoing uncertainty over his and his family's immigration status and placement.

IHMS further advised that Mr X received monitoring and/or treatment for physical health issues including an irregular heartbeat, being a tuberculosis contact, chronic headaches, a stomach infection, gastric reflux, and abdominal pain.

² 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.

Ms Y

IHMS advised that Ms Y received treatment and counselling for multiple mental health concerns including a major depressive disorder, an adjustment disorder, a personality disorder, anxiety symptoms, panic attacks, post-traumatic stress disorder and an ongoing history of self-harm.

Ms Y was also placed on Supportive Monitoring and Engagement Observations on multiple occasions including long-term observation between 4 June 2015 and 30 September 2015.

A psychotherapist made recommendations on 14 April 2016 and 2 June 2016 that Ms Y be moved to a metropolitan location for increased mental health services.

IHMS further advised that Ms Y was treated for heart palpitations but the matter was now considered to be resolved.

August 2014	Admitted to a psychiatric hospital following a suicide attempt. Ms Y was then diagnosed with and treated for a major depressive episode.
20 February 2015	Ms Y gave birth to her son ³ without significant complication.

Detention incidents

27 August 2015 and 28 December 2015	DIBP Incident Reports recorded that Mr X was allegedly involved in behavioural incidents of a minor nature.
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Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and Ms Y were detained on 6 August 2013 after arriving in Australia aboard SIEV *Wetumpka* 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 couple's claims to determine if they are to be found to engage Australia's protection obligations, it appears likely that they will remain in restricted 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 also notes DIBP's advice that Mr X and Ms Y are awaiting 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 Mr X and Ms Y's immigration status.

³ Master Z was born in Australia on 20 February 2015 and detained on 3 March 2015. He has been in detention for less than two years and is not subject to reporting under s 486N.