

**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 Ms X and her sons who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Ms X (and sons)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1972

**Family details**

<b>Family members</b>	Mr Y (son)	Mr Z (son)	Master P (son)
<b>Citizenship</b>	Country A	Country A	Country A
<b>Year of birth</b>	1991	1997	2001

<b>Ombudsman ID</b>	1002428-O
<b>Date of DIBP's reports</b>	15 June 2016 and 11 December 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

13 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia with her husband, Mr Q <sup>1</sup> and their sons aboard Suspected Illegal Entry Vessel (SIEV) 826 <i>Jasper</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
20 August 2013	The family was transferred to Christmas Island Immigration Detention Centre (IDC).
21 March 2014	The family was transferred to Nauru Regional Processing Centre (RPC). <sup>2</sup>
19 January 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Brisbane Immigration Transit Accommodation (ITA).
7 August 2015	The family was transferred to Wickham Point APOD.
10 March 2016	The family was transferred to community detention.

<sup>1</sup> Mr Q is the subject of Ombudsman report 1002350-O. Mr Q was transferred to Australia for medical treatment on 11 September 2014 while Ms X and their sons remained at Nauru RPC. On 29 November 2014 Mr Q was reunited with his family when he was transferred to Nauru RPC on completion of his treatment. Mr Q is reported on separately as a result of his detention period including the time he was in Australia for medical treatment without his family.

<sup>2</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.

## Visa applications/case progression

Ms X and her sons 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 Ms X and her sons 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.

Ms X and her sons were returned to Australia for medical treatment on 19 January 2015.

The department has advised that under current policy settings Ms X and her sons 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.

12 March 2014	The department notified Ms X and her sons of the unintentional release of personal information. <sup>3</sup>
24 February 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

## Health and welfare

### Ms X

International Health and Medical Services (IHMS) advised that Ms X disclosed a history of gynaecological issues with associated pain in October 2014. Following an ultrasound and a number of unsuccessful referrals due to detention transfers and policy requirements, Ms X continued to await a specialist referral at the time of reporting. Ms X also received treatment for benign lumps and kidney stones. In May 2016 Ms X was identified as a tuberculosis (TB) contact and continues to be monitored as per state policy.

IHMS further advised that Ms X was prescribed with antidepressant medication for depression and was referred to specialist counselling after disclosing a history of torture and trauma. No concerns in relation to these conditions have been noted since her transfer to community detention.

### Mr Y

IHMS advised that Mr Y attended numerous specialist appointments for the management of a chronic cough with no conclusive diagnosis. This condition continues to be investigated.

IHMS further advised that Mr Y disclosed a history of torture and trauma on 29 August 2013 but declined specialist counselling. He regularly engaged with the mental health team (MHT) while in restricted detention and reported symptoms of detention fatigue and an adjustment disorder. IHMS advised that since his transfer to community detention, no mental health concerns have been raised.

### Mr Z

IHMS advised that Mr Z was treated for a stomach bacterial infection and a minor curvature of his spine. In May 2016 Mr Z was identified as a TB contact and continues to be monitored as per state policy.

<sup>3</sup> In a media release dated 19 February 2014 the 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.

*Master P*

IHMS advised that Master P received treatment for a skin condition and vision issues. In May 2016 Master P was identified as a TB contact and continues to be monitored as per state policy.

IHMS further advised that in July 2015 Master P reported thoughts of self-harm. Upon further engagement with the MHT and transfer to community detention no further mental health concerns have been reported.

**Other matters**

3 March 2015	Mr Q lodged a complaint with the Australian Human Rights Commission (AHRC) on behalf of his family. On 30 April 2015 the department provided a response to the AHRC. On 18 June 2015 and 9 October 2015 the department provided further information. The complaint was closed on 14 September 2016.
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**Ombudsman assessment/recommendation**

Ms X and her sons were detained on 13 August 2013 after arriving in Australia by sea and have been held in restricted detention for a cumulative period of more than two and a half years with no processing of their protection claims.

Ms X and her sons were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and her sons arrived after 13 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 Ms X and her sons are not eligible to have their protection claims assessed in Australia and that without an assessment of Ms X and her sons' claims it appears likely they will remain in detention indefinitely.

The Ombudsman recommends that priority is given to resolving Ms X and her sons' immigration status.