

**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 24 months (two years).

<b>Name</b>	Mr X (and family)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1980

**Family details**

<b>Family members</b>	Ms Y (wife)	Master Z (son)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1981	2013

<b>Ombudsman ID</b>	1002371-O
<b>Date of DIBP's report</b>	21 April 2016
<b>Total days in detention</b>	733 (at date of DIBP's report)

**Detention history**

26 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 814 <i>Sipsey</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
12 August 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
15 August 2013	Transferred to Christmas Island APOD.
13 December 2013	Transferred to Christmas Island IDC.
6 February 2014	Transferred to Christmas Island APOD.
23 May 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
14 February 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point APOD.
12 February 2016	Transferred to community detention.

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<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.

### Visa applications/case progression

12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X and his family of the unintentional release of personal information. <sup>2</sup>
14 February 2015	The family was returned to Australia from Nauru RPC for medical treatment.
28 January 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.

### Health and welfare

#### Mr X

International Health and Medical Services (IHMS) advised that Mr X receives treatment for chronic foot pain and has been referred to an orthopaedic specialist.
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#### Ms Y

IHMS advised that Ms Y receives treatment for a range of physical health concerns including shoulder pain, recurrent ear infections and additional medical conditions.	
IHMS further advised that Ms Y was prescribed with antidepressant medication after presenting with anxiety and low mood.	
August 2015	Ms Y gave birth to her daughter <sup>3</sup> without complication.

#### Master Z

IHMS advised that Master Z was treated by a paediatrician after presenting with anxiety and behavioural issues. Mr X and Ms Y received support from specialists in relation to positive parenting strategies and Master Z continues to receive specialist attention.
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### Detention incidents

15 April 2015	A DIBP Incident Report recorded that Mr X was allegedly involved in a major disturbance involving damage to property and abusive aggressive behaviour. The incident was referred to the Northern Territory Police who declined to investigate.
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<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> Miss P was born in Australia in August 2015 and detained on 17 August 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

**Other matters**

28 May 2014	Mr X and his family lodged a complaint with the Australian Human Rights Commission (AHRC) alleging a breach of their human rights. DIBP has provided several responses to the AHRC and the matter remains ongoing.
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**Ombudsman assessment/recommendation**

<p>The Ombudsman notes that Mr X and his family were detained on 26 July 2013 after arriving in Australia aboard <i>SIEV Sipsev</i> and have been held in detention for a cumulative period of over two years with no processing of their protection claims.</p> <p>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.</p> <p>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.</p> <p>The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X and his family's immigration status.</p>
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