

**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 mother who have remained in restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Ms X (and mother)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1992

**Family details**

<b>Family members</b>	Ms Y (mother)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1969

<b>Ombudsman ID</b>	1002392-O
<b>Date of DIBP's reports</b>	4 May 2016 and 2 November 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

7 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 823 <i>Gadsden</i> . The family <sup>1</sup> was transferred to an Alternative Place of Detention (APOD), Christmas Island.
2 February 2014	The family was transferred to Nauru Regional Processing Centre (RPC). <sup>2</sup>
1 November 2014	Ms X and her mother were returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
10 November 2014	Transferred to Melbourne Immigration Transit Accommodation (ITA).

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<sup>1</sup> Ms X's father, Mr Z and brother, Mr P arrived in Australia with Ms X and her mother. They are located at Nauru RPC and are not subject to reporting under s 486N. The department advised on 2 November 2016 that it is actively pursuing options for reunification of the 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 mother 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 they 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 mother were returned to Australia for medical treatment on 1 November 2014.

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

17 October 2016

Referred on a ministerial submission for consideration under s 197AB for a community detention placement.

## Health and welfare

*Ms X*

International Health and Medical Services (IHMS) advised that Ms X attended regular counselling sessions for the management of anxiety, panic attacks, depression, post-traumatic stress disorder and a history of torture and trauma. She was prescribed with antidepressants and it was noted by a psychologist that her mental state is exacerbated by trauma associated with ongoing concerns about her family that remain at Nauru RPC.

IHMS further advised that Ms X has received treatment for neck and shoulder pain, weight concerns and benign lumps. Ms X voiced frustrations with the food available in restricted detention, stating that there were not enough vegetarian options. She was prescribed with a protein supplement.

*Ms Y*

IHMS advised that Ms Y has received treatment and attended regular counselling for the management of significant mental health concerns including anxiety, depression, insomnia, anorexia, suicidal ideation, post-traumatic stress disorder, and panic attacks with associated chest tightness and palpitations. Ms Y required admission at a psychiatric hospital in July 2015, and following discharge was placed on Supportive Monitoring and Engagement observations. In April 2016 an IHMS psychologist advised that any improvement in Ms Y's condition following counselling is negated by ongoing stress associated with her placement in restricted detention and separation from her family in Nauru. In a follow up review in August 2016 an IHMS psychologist stated that her mental state is likely to continue to decline if her current situation remains the same. Additionally, IHMS advised that Ms Y's son who remains at Nauru RPC has ongoing mental health concerns that are exacerbated by his separation from his mother.

IHMS further advised that Ms Y received treatment for chronic back, neck and wrist pain, osteoporosis, and cardiac concerns associated with panic attacks.

11 November 2014 –  
15 February 2016

Incident Reports recorded that Ms Y was transported to hospital on four occasions and an ambulance was requested on a further five occasions.

26 May 2015 –  
13 November 2015

Incident Reports recorded that Ms Y threatened self-harm on three occasions and self-harmed on one occasion.

### **Ombudsman assessment/recommendation**

Ms X and her mother were detained on 7 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 mother were transferred to an RPC and returned to Australia for medical treatment. The department advised that because they arrived after 13 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman notes that under current policy settings Ms X and her mother 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 restricted detention indefinitely.

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 with concern advice from IHMS that both Ms X and her mother have significant mental health concerns that are exacerbated by their separation from their family who remain at Nauru RPC.

The Ombudsman strongly recommends that Ms X and her mother's referral to the Minister for consideration of a community detention placement be expedited. The Ombudsman further recommends that options for reunifying the family be prioritised.

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