

**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 Ms Y who have remained in immigration detention for a cumulative period of more than 24 months (two years).

<b>Name</b>	Mr X (and wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1981

**Family details**

<b>Family members</b>	Ms Y (wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1984

<b>Ombudsman ID</b>	1002332-O
<b>Date of DIBP's report</b>	1 March 2016
<b>Total days in detention</b>	730 (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) 812 <i>Pyriton</i> . They were transferred to an Alternative Place of Detention (APOD), Christmas Island.
16 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
23 August 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Bladin Immigration Detention Centre.
26 February 2015	Transferred to Wickham Point APOD.
12 February 2016	Transferred to community detention.

**Visa applications/case progression**

23 August 2014	Mr X and Ms Y were transferred from Nauru RPC to Australia for medical treatment.
28 January 2016	The Minister intervened under s 197AB to grant Mr X and Ms Y a community detention placement.

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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.

16 March 2016	The Department of Immigration and Border Protection (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.
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## Health and welfare

### Mr X

International Health and Medical Services (IHMS) advised that Mr X has required treatment for multiple physical health conditions including recurrent tonsillitis, epigastric pain, and a joint dysfunction in the jaw.  IHMS advised that Mr X presented with low mood and disrupted sleep related to his prolonged detention and concerns about his wife's ability to cope in restricted detention. Mr X was provided with support from the IHMS mental health team and was prescribed with medication.	
15 January 2014	A DIBP Incident Report recorded that Mr X refused food and fluid.
29 July 2015	A DIBP Incident Report recorded that Mr X threatened self-harm.

### Ms Y

IHMS advised that Ms Y receives treatment for multiple complex physical health conditions including reversed internal organs, an underactive thyroid, abdominal pain, chest pain and gestational diabetes. She has received specialist treatment and continues to be monitored.  IHMS advised that Ms Y received treatment for anxiety and depression with insomnia. Her treating psychiatrist advised on 14 October 2014 that he is not in support of her returning to Nauru. However during her consultation with the psychiatrist on 5 November 2015 the psychiatrist reported that Ms Y does not have a psychological or physical condition which could explain her physical symptoms and that she is not benefiting from psychotropic or anti-depressant medication.	
15 January 2014	A DIBP Incident Report recorded that Ms Y refused food and fluid.
July 2015	Ms Y gave birth to her son <sup>2</sup> without complication.

## Detention incidents

31 October 2015	A detainee alleged that Ms Y had assaulted a female detainee. Northern Territory police investigated the incident and advised DIBP that the matter was finalised without charge.
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## Other matters

19 May 2015	Mr X and Ms Y lodged a complaint with the Australian Human Rights Commission (AHRC) in relation to their transfer to an RPC. On 3 August 2015 DIBP provided a response to the AHRC and the matter remains ongoing.
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<sup>2</sup> Master Z was born in Australia in July 2015 and has been in detention for less than two years. He is not subject to reporting under s 486N.

### **Ombudsman assessment/recommendation**

The Ombudsman notes that Mr X and Ms Y were detained on 26 July 2013 after arriving in Australia aboard SIEV *Pyriton* and have been held in detention for a cumulative period of over two 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 Mr X and Ms Y'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 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 recommends that priority is given to exploring options to enable the resolution of Mr X and Ms Y's immigration status.