

**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 daughter 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 daughter)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1978

**Family details**

<b>Family members</b>	Ms Y (daughter)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1999

<b>Ombudsman ID</b>	1002436-O
<b>Date of DIBP's reports</b>	27 June 2016 and 26 December 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

19 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 835 <i>Saginaw</i> . Ms X and her daughter were transferred to an Alternative Place of Detention (APOD), Christmas Island.
2 February 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
13 December 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
6 January 2015	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
5 May 2015	Transferred to Melbourne Immigration Transit Accommodation.
16 June 2015	Transferred to Wickham Point APOD.
3 December 2015	Transferred to Brisbane Immigration Transit Accommodation.
23 December 2015	Transferred to community detention.

<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

<p>Ms X and her daughter 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 daughter 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.</p> <p>Ms X and her daughter were returned to Australia for medical treatment on 13 December 2014.</p> <p>The department has advised that under current policy settings Ms X and her daughter 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.</p>	
13 March 2014	The department notified Ms X and her daughter of the unintentional release of personal information. <sup>2</sup>
15 December 2015	The Minister intervened under s 197AB to allow Ms X and her daughter to reside in community detention.

## Health and welfare

### Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X has received treatment and was monitored for type 2 diabetes, a thyroid condition, neck pain and kidney concerns and was referred to specialist reviews as clinically required. After reporting significant vision concerns Ms X was transferred to Australia for an ophthalmology review and underwent surgery to remove scar tissue from her eyes.</p> <p>IHMS advised that Ms X disclosed a history of torture and trauma in September 2013 and was referred for specialist counselling. While in restricted detention Ms X engaged with the mental health team and psychological counselling for the management of depression and an adjustment disorder. Following transfer to community detention, Ms X was referred for ongoing counselling sessions after reporting ongoing sleeping difficulties, low mood, low motivation and anxiety associated with her and her daughter's immigration status.</p>	
14 and 26 September 2013	Incident Reports recorded that Ms X threatened self-harm on two occasions.
15 January 2014	An Incident Report recorded that Ms X refused food and fluid.
17 March, 23 April and 7 June 2015	Incident Reports recorded that Ms X self-harmed on three occasions.

### Ms Y

<p>IHMS advised that Ms Y self-referred to the mental health team in September 2014 after experiencing symptoms of detention fatigue, low mood and worries about herself and her mother. She was diagnosed with depression in March 2015 and was placed under observations while in restricted detention following incidents of self-harm. She was admitted to hospital as a psychiatric inpatient twice in 2015 and was diagnosed with schizoaffective disorder. Following her transfer to community detention she was referred for ongoing psychiatric counselling and was placed on a mental health care plan after reporting thoughts of self-harm.</p>	
---	--

<sup>2</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.

27 February, 26 March and 17 April 2015	Incident Reports recorded that Ms Y threatened self-harm on three occasions.
6 June and 10 July 2015	Incident Reports recorded that Ms Y self-harmed on two occasions, once requiring emergency hospital treatment.

**Ombudsman assessment/recommendation**

Ms X and her daughter were detained on 19 August 2013 after arriving in Australia by sea and have been held in detention for a cumulative period of more than two and a half years with no processing of their protection claims.

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

The Ombudsman notes the advice from IHMS that Ms X and her daughter have medical conditions that requires ongoing 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 with concern that Ms X and her daughter continue to experience significant mental health concerns.

The Ombudsman notes that under current policy settings Ms X and her daughter are not eligible to have their protection claims assessed in Australia and that without an assessment of Ms X and her daughter’s claims it appears likely they will remain in detention indefinitely.

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