

**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).

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1981

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1982

Ombudsman ID	1002384-O
Date of DIBP's report	29 April 2016
Total days in detention	730 (at date of DIBP's report)

Detention history

20 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 860 <i>Rosemead</i> . They were transferred to Christmas Island Immigration Detention Centre.
22 October 2013	Transferred to Christmas Island Alternative Place of Detention (APOD).
22 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
2 August 2014	Returned to Australia and re-detained under s 189(1). They were transferred to Wickham Point APOD.
31 March 2016	Transferred to community detention.

Visa applications/case progression

2 August 2014	Mr X and Ms Y were transferred from Nauru RPC to Australia for medical treatment.
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¹ 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.
18 March 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for gastroenterological abnormalities and was referred for a colonoscopy. In September 2014 he underwent treatment for latent tuberculosis and continues to be monitored as per state policy. IHMS further advised that Mr X was reviewed by a psychiatrist and attends psychological counselling for management of depression, detention fatigue and insomnia.	
3 February 2016	A DIBP Incident Report recorded that Mr X had threatened to self-harm if he was returned to an RPC.

Ms Y

IHMS advised that Ms Y receives treatment for multiple physical health concerns including gastric reflux, kidney pain, neck pain, headaches and vision impairment. She continues to be monitored by the general practitioner and physiotherapist and referred for specialist review as required. IHMS further advised that Ms Y attended psychological counselling and group therapy for management of anxiety, depression, insomnia, coping difficulties and detention fatigue. While held in restricted detention, she was placed on Supportive Monitoring and Engagement observations on multiple occasions following threats of self-harm and suicidal ideation. IHMS advised that her mental health stabilised following her transfer to community detention.	
13 November 2014	A DIBP Incident Report recorded that Ms Y refused food and fluid as a form of protest.
December 2014	Ms Y gave birth to her daughter ² without complication.

Detention incidents

25 November 2015	A DIBP Incident Report recorded that a detainee allegedly behaved inappropriately and threatened Ms Y. The incident was referred to the Northern Territory (NT) Police for investigation. No further information was provided.
11 February 2016	A DIBP Incident Report recorded that Mr X allegedly behaved inappropriately towards another detainee. The incident was referred to the NT Police, however the alleged victim declined to press charges. The matter is now finalised.

² Miss Z was born in Australia in December 2014 and detained on 5 January 2015. She has been in detention for less than two years and is not subject to reporting under s 486N.

Other matters

Ms Y's brother, Mr P, arrived in Australia on 20 October 2013 aboard SIEV <i>Rosemead</i> . DIBP advised that Mr P was transferred to Nauru RPC on 22 January 2014.	
2 October 2014	Ms Y lodged a complaint with the Ombudsman's office in relation to her separation from her brother. On 29 October 2014 DIBP provided a response and on 4 November 2014 the Ombudsman's office advised that no further investigation was required.
29 October 2014	Mr X and family lodged a complaint with the Australian Human Rights Commission. The matter remains ongoing.

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and Ms Y were detained on 20 October 2013 after arriving in Australia aboard SIEV *Rosemead* 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.