

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

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| Name | Ms X (and children) |
| Citizenship | Country A |
| Year of birth | 1956 |

Family details

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| Family members | Ms Y (daughter) | Mr Z (son) | Mr P (son) |
| Citizenship | Stateless (claimed), born in Country A | Country A | Country A |
| Year of birth | 1986 | 1996 | 1998 |

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| Ombudsman ID | 1002437-O |
| Date of DIBP's reports | 30 June 2016 and 29 December 2016 |
| Total days in detention | 912 (at date of DIBP's latest report) |

Detention history

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| 9 September 2013 | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia with her husband, Mr Q ¹ and their children aboard Suspected Illegal Entry Vessel 845 <i>Calvert</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 13 September 2013 | The family was transferred to Nauru Regional Processing Centre (RPC). ² |
| 5 July 2014 | Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point APOD. |
| 8 July 2014 | The family was transferred to Inverbrackie APOD. |
| 3 December 2014 | The family was transferred to Bladin APOD. |
| 26 February 2015 | The family was transferred to Wickham Point APOD. |
| 8 September 2015 | The family was transferred to community detention. |

¹ Mr Q is the subject of Ombudsman report 1002231-O. Mr Q was transferred to Australia for medical treatment on two occasions, 29 September 2013 and 2 February 2014, while Ms X and their children remained at Nauru RPC. On 5 July 2014 Mr Q was reunited with his family when Ms X and their children were transferred to Australia. Mr Q is reported on separately as a result of his detention period including the time he was in Australia for medical treatment without his family.

² 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

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| <p>Ms X and her children 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 children 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 children were returned to Australia for medical treatment on 5 July 2014.</p> <p>The department has advised that under current policy settings Ms X and her children 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> | |
| 31 August 2015 | The Minister intervened under s 197AB to allow the family to reside in community detention. |

Health and welfare

Ms X

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| <p>International Health and Medical Services (IHMS) advised that Ms X has received treatment for chronic knee pain, asthma, and high blood pressure. Following multiple unsuccessful referrals due to detention placement transfers, Ms X underwent a successful knee replacement in September 2016. She attended physiotherapy and occupational therapy sessions following surgery with no concerns raised.</p> <p>IHMS further advised that Ms X was noted to have an adjustment disorder in September 2013 associated with her family's separation from her husband. She regularly engaged with the mental health team (MHT) while in restricted detention and following her transfer to community detention no mental health concerns have been raised.</p> |
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Ms Y

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| <p>IHMS advised that Ms Y has received treatment for anaemia and type 2 diabetes.</p> <p>IHMS further advised Ms Y had previously engaged with the MHT to manage symptoms of detention fatigue and anxiety associated with the possibility of being returned to Nauru RPC. Following her transfer into community detention she reported stress and nightmares associated with her immigration status to a general practitioner but declined a referral to a psychologist.</p> | |
| 28 March 2015 | An Incident Report recorded that Ms Y was transferred to hospital. |

Mr Z

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| <p>IHMS advised that Mr Z was treated for a nose injury which may require surgery and was awaiting review with an ear, nose and throat specialist at the time of reporting.</p> <p>IHMS further advised that in October 2013 Mr Z disclosed a history of torture and trauma with associated self-harm and suicidal ideation and was referred for specialist counselling. Since his transfer to community detention, no mental health concerns have been raised.</p> |
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Mr P

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| <p>IHMS advised that Mr P has not required treatment for any major physical or mental health concerns.</p> |
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Other matters

Mr Q and Ms X's eldest daughter, Ms R, and her family were granted Protection visas on 19 July 2012 and reside in the community.

Ombudsman assessment/recommendation

Ms X and her children were detained on 9 September 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 children were transferred to an RPC and returned to Australia for medical treatment. The department advised that because Ms X and her children arrived after 13 July 2013 they remain liable for transfer back to an RPC on completion of their 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 that under current policy settings Ms X and her children are not eligible to have their protection claims assessed in Australia and that without an assessment of the family's claims it appears likely they will remain in detention indefinitely.

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