

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

<b>Name</b>	Mr X (and family)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1980

**Family details**

<b>Family members</b>	Ms Y (wife)	Miss Z (daughter)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1986	2009

<b>Ombudsman ID</b>	1002391-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**

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>Pyrton</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
12 August 2013	Transferred to Christmas Island Immigration Detention Centre.
15 August 2013	Transferred to Christmas Island APOD.
16-17 January 2014	Transferred to Nauru Regional Processing Centre (RPC). <sup>1</sup>
6 September 2014	Returned to Australia and re-detained under s 189(1).
13 September 2014	Transferred to Nauru RPC.
1 November 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point APOD.
6 January 2015	Transferred to Blaydin Point APOD.
26 February 2015	Transferred to Wickham Point APOD.
23 November 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.

August 2016	Mr X and his family requested a community detention placement variation to be closer to their family support network in City B in State C. On 2 November 2016 the Department of Immigration and Border Protection (the department) advised it was considering this request.
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#### **Visa applications/case progression**

Mr X and his family arrived in Australia by sea after 19 July 2013 and were transferred on two occasions to an RPC. The department has advised that Mr X and his family 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.

Mr X and his family were most recently returned to Australia for medical treatment on 1 November 2014.

The department has advised that under current policy settings Mr X and his family 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.

11 November 2015	The Minister agreed to intervene under s 197AB to allow the family to reside in community detention.
22 December 2015	The Minister intervened under s 197AD to vary the family's residential address.

#### **Health and welfare**

##### *Mr X*

International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and received specialised counselling.

IHMS further advised that Mr X was investigated and/or received treatment for physical health concerns including reflux, hearing loss, and possible injuries from a car accident on 11 April 2016. He was referred to an orthopaedic specialist for review of a lipoma on his left foot with an appointment pending.

### *Ms Y*

IHMS advised that Ms Y received treatment and/or counselling for various mental health concerns including a major depressive disorder, post-traumatic stress disorder, and anger management issues. In early 2015 she threatened suicide and homicide of her daughter and was scheduled under mental health legislation at a hospital. She was subsequently recommended for voluntary admission to a private psychiatric hospital which she declined.

IHMS advised that since being placed in community detention she has been under the care of a psychiatrist. An IHMS psychiatrist advised her mental illness appeared to be persisting despite being in community detention.

IHMS stated that Ms Y required the availability of a strong child protection framework and options for alternative care for her child in case she again developed thoughts of harming her child.

IHMS further advised that Ms Y may require an inpatient psychiatric admission which was not available on Nauru.

During a psychiatric review on 27 April 2016 Ms Y reported that she was struggling to get out of the house due to headaches and was experiencing poor sleep and ongoing low mood. The psychiatrist adjusted her medication and recommended exercise. She continued to attend counselling and expressed suicidal ideation without acute intent or plan. On 9 August 2016 a counsellor with a specialist counselling service advised that Ms Y was presenting with significant and deteriorating symptoms of major depressive disorder exacerbated by concerns about her daughter's wellbeing. On 22 September 2016 IHMS stated that she should continue to have access to her psychiatrist in order to consider psychiatric admission if required. IHMS further advised that a psychiatrist treating Ms Y's daughter as well as a psychologist treating Ms Y and her daughter had recommended a move to State C as being beneficial to the family's mental health as they would have increased family and social supports.

IHMS further advised that Ms Y was investigated and/or received treatment for a number of physical health concerns including headaches, abdominal pain, chest pain, dental matters and gynaecological issues. She is awaiting appointments with a gastroenterologist, gynaecologist and endodontist.

### *Miss Z*

IHMS advised that Miss Z was diagnosed with a severe anxiety disorder which was pervasive through most areas of her life, giving her constant anxiety, depression and anger. She reported thoughts of self-harm on multiple occasions. She was also diagnosed with post-traumatic stress disorder. She was prescribed with antidepressant medication and received counselling from a specialist counselling service. She also received psychiatric review through a specialist mental health service for children on 16 June 2016 where a psychiatrist assessed that she was suffering from conditions including anxiety and PTSD. These symptoms were said to have been precipitated by detention on Nauru and further impacted by her mother's depression and parental stress. It was recommended that her antidepressant medication and her and her mother's counselling continue. It was further advised that a move to community detention in State C would be beneficial to Miss Z's mental health as her family would have increased family and social supports.

IHMS additionally advised that Miss Z received treatment for G6PD deficiency, adenoid hypertrophy and dental matters. As at 22 September 2016 a dental treatment plan was awaiting approval.

## **Detention incidents**

Incident Reports recorded that Mr X was allegedly involved a small number of behavioural incidents of a minor nature.	
15 April 2015	An Incident Report recorded that Ms Y was allegedly involved in a major disturbance in which multiple detainees broke and damaged property.

## **Other matters**

Mr X has two cousins residing in City B.

## **Ombudsman assessment/recommendation**

Mr X and his family were detained on 26 July 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.

Mr X and his family were transferred to an RPC and returned to Australia for medical treatment on two occasions. The department advised that because Mr X and his family arrived after 13 July 2013 they remain liable for transfer back to an RPC on completion of treatment.

The Ombudsman notes the advice from IHMS that family members have medical and psychiatric conditions that require ongoing or further treatment. The Ombudsman further notes advice from a psychiatrist and a psychologist that the family would benefit from a move to community detention in State C as it would have increased family and social supports. The Ombudsman recommends that the department expedite consideration of the family's request to be closer to their family support network in State C if this matter has not yet been finalised.

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 Mr X and his family 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 recommends that priority is given to resolving the family's immigration status.