

**ASSESSMENT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the first s 486O assessment 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).

Name	Mr X (and family)
Citizenship	Country A, born in Country B
Year of birth	1970

Family details

Family members	Ms Y (wife)	Mr Z (son)	Master P (son)
Citizenship	Country A, born in Country B	Country A	Country A
Year of birth	1975	1995	1999

Ombudsman ID	1002522-O
Date of DIBP's reviews	8 October 2016 and 8 April 2017
Total days in detention	912 (at date of DIBP's latest review)

Detention history

25 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. The family was transferred to an Alternative Place of Detention, Christmas Island.
10 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
27 March 2015	Returned to Australia and re-detained under s 189(1). The family was transferred to Facility C.
23 March 2016	Transferred to community detention.

Visa applications/case progression

Mr X and his family 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 the 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.

The family was returned to Australia for medical treatment on 27 March 2015.

The department has advised that under current policy settings the 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.

¹ Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of review under s 486N.

8 March 2016	The Minister intervened under s 197AB to allow the family to reside in community detention.
31 May 2016	The family's case was referred to the Minister for consideration under s 197AD for the possible variation of their community detention address.
10 June 2016	The Minister declined to intervene under s 197AD.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment for chronic back and knee pain and a cystic lesion. On 3 November 2015 he was admitted to hospital for treatment after sustaining injuries and aggravating his condition during an altercation in restricted detention. He subsequently attended physiotherapy and was provided with pain relief medication. Following his transfer to community detention, his condition was monitored by specialist care providers and he was awaiting a review with an orthopaedic specialist.

Ms Y

IHMS advised that Ms Y attended psychiatric and psychological counselling and was prescribed with medication for the management of multiple mental health concerns, including anxiety and depression. Ms Y disclosed thoughts of self-harm and presented with low mood related to the possibility of being returned to Nauru RPC. She also presented with anxiety associated with her community detention accommodation and fears she would fall down the stairs while carrying her child.

On 26 July 2016 Ms Y collapsed and was transported to hospital. A treating neurologist advised that her condition was anxiety related and she was referred for a psychiatric assessment. On 17 October 2016 a treating psychiatrist reported that the speedy resolution of her immigration status and accommodation concerns would be beneficial for her mental health. IHMS advised that her condition continued to be monitored by the mental health team.

IHMS further advised that Ms Y received treatment for multiple physical health concerns, including gynaecological concerns, gestational diabetes, facial numbness, dizziness and headaches. She was referred to an immunologist on 29 February 2016 and was awaiting an appointment with a neurologist. Her condition continued to be monitored by a general practitioner (GP).

July 2015	Gave birth to her son. ²
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Mr Z

IHMS advised that Mr Z received treatment for multiple physical health concerns, including dermatitis, and was provided with rehydration therapy after collapsing due to dehydration.

² Master Q was born in Australia in July 2015 and detained on 15 July 2015. He has been in detention for less than two years and is not subject to review under s 486N.

Master P

IHMS advised that Master P disclosed a history of torture and trauma. In February 2016 a psychiatrist reported that he had intermittently self-harmed in an attempt to relieve his stress. On 12 December 2016 he presented with symptoms of depression related to ongoing frustration and difficulties at school and was referred to a specialist community mental health service.

IHMS further advised that Master P received treatment for asthma and continued to be monitored by a GP.

Other matters

4 November 2015	Mr Z lodged a complaint with the Office of the Commonwealth Ombudsman alleging inappropriate use of force by detention centre staff against his father during an incident on 2 November 2015. The complaint was investigated and on 23 May 2016 the matter was finalised.
16 September 2015	The department was notified that Mr X had lodged a complaint with the Australian Human Rights Commission. On 6 January 2016 the department provided a response. The matter remained ongoing at the time of the department's latest review.

Ombudsman assessment/recommendation

Mr X and his family were detained on 25 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.

The family was transferred to an RPC and returned to Australia for medical treatment. The department advised that because the family arrived after 19 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 further notes advice from IHMS that Ms Y raised concerns about her family's community detention accommodation and a treating psychiatrist reported that the speedy resolution of the family's immigration status and accommodation concerns would be beneficial for Ms Y's mental health.

The Ombudsman notes that under current policy settings the family is 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 detention indefinitely.

In light of the reported adverse impact of the family's accommodation concerns on Ms Y's mental health, the Ombudsman recommends that the family's case be referred to the Minister under s 197AD for consideration to vary their community detention address.

The Ombudsman further recommends that priority is given to resolving the family's immigration status.