

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

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1984

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1986

Ombudsman ID	1002393-O
Date of DIBP's reports	6 May 2016 and 4 November 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

11 August 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 829 <i>Marbury</i> . The couple was transferred to an Alternative Place of Detention (APOD), Christmas Island.
20 August 2013	Transferred to Christmas Island Immigration Detention Centre.
22 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
18 October 2014	Returned to Australia and re-detained under s 189(1). The couple was transferred to Facility B.
29 January 2016	Transferred to community detention.

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.

Visa applications/case progression

Mr X and his wife 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 couple is 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 couple was returned to Australia for medical treatment on 18 October 2014.

The department has advised that under current policy settings Mr X and his wife are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of treatment.

16 January 2016

The Minister agreed to intervene under s 197AB to allow Mr X and his wife to reside in community detention.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X was diagnosed with anxiety and low mood influenced by his situation and his wife's ongoing mental health issues. These were managed with medication and counselling.

IHMS further advised that Mr X was investigated and/or received treatment for physical health concerns including renal colic and an old fracture. In relation to the latter matter he underwent surgery in November 2015 to repair the old fracture and attended therapy appointments as part of post-operative management which concluded in March 2016.

Ms Y

IHMS advised that Ms Y disclosed a history of known mental health issues existing prior to her arrival in Australia.

In February 2015 a psychiatrist noted an adjustment disorder with depressed mood. It was also noted that she was finding it difficult to bond with her infant child. Ms Y presented with anxiety/panic attacks in April 2015 and Mr X alleged she made threats of self-harm and expressed thoughts of killing their child. She was placed on Supportive Monitoring and Engagement (SME) observations at a high level and admitted to a hospital for further assessment and management. She was discharged back to IHMS care on 27 April 2015 and continued on SME observations. A further review by the psychiatrist in June 2015 found her to have post-natal depression. She was admitted to a psychiatric hospital on 30 June 2015 and discharged on 31 August 2015.

At post-discharge review the psychiatrist did not consider rehospitalisation would be of benefit and suggested discontent with situational issues would likely persist regardless of her location if she remained in a restricted detention environment. Her antidepressant medication ceased in January 2016 due to pregnancy.

Ms Y was seen by the psychiatric team during the course of her pregnancy in hospital. She subsequently attended appointments with the community psychiatrist commencing on 18 May 2016. During later appointments her mood deteriorated in the context of the birth of her second child. Her medications were adjusted according to her clinical presentation and she received home visits from a specialised counselling service.

IHMS also advised that Ms Y received treatment for physical health concerns including fibromyalgia.

January 2015	Ms Y gave birth to her first son ² . She was subsequently investigated for hormonal issues following the birth. The investigations were negative for abnormalities and suggestive of side-effects from her antipsychotic medication. This was ceased due to her further pregnancy, with further symptoms to be managed as clinically indicated by her general practitioner.
16 April 2015	An Incident Report recorded that Ms Y made a threat to kill herself if she was told she was going to Nauru.
29 May 2015	An Incident Report recorded that Ms Y made a threat of self-harm through a Serco complaint form.
9 July 2015	An Incident Report recorded that Ms Y had not taken three meals in a 24-hour period.
July 2016	Ms Y gave birth to her second son ³ after being diagnosed with gestational diabetes in April 2016.

Other matters

13 January 2016	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). The AHRC finalised investigation of the matter on 8 July 2016.
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Ombudsman assessment/recommendation

Mr X and his wife were detained on 11 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.

The couple was transferred to an RPC and returned to Australia for medical treatment. The department advised that because the couple arrived after 13 July 2013 they remain liable for transfer back to an RPC on completion of 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 Mr X and his wife 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 detention indefinitely.

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

² Master Z was born in Australia in January 2015 and detained on 31 January 2015. He was in detention for less than two years at the date of the department's latest report and is not currently subject to reporting under s 486N.

³ Master P was born in Australia in July 2016 and detained on 12 October 2016. He has been in detention for less than two years and is not subject to reporting under s 486N.