

**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).

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

Family details

Family members	Ms Y (wife)	Miss Z (daughter)
Citizenship	Country A	Country A
Year of birth	1981	2009

Ombudsman ID	1002423-O
Date of DIBP's reports	3 June 2016 and 2 December 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

19 August 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland ¹ aboard Suspected Illegal Entry Vessel 832 <i>Piedmont</i> . The family was transferred to Northern Immigration Detention Centre.
24 August 2013	Transferred to Christmas Island Alternative Place of Detention (APOD).
17 January 2014	Transferred to Nauru Regional Processing Centre (RPC). ²
1 November 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Wickham Point APOD.
6 January 2015 – 29 July 2015	Transferred five times between Bladin APOD, Wickham Point APOD and Brisbane Immigration Transit Accommodation.
15 February 2016	Transferred to community detention.

¹ Following legislative amendment on 20 May 2013, all unauthorised maritime arrivals, including those who arrived on the Australian mainland or an 'excised offshore location' were barred from lodging a Protection visa application under s 46A.

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

<p>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 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.</p> <p>Mr X and his family were returned to Australia for medical treatment on 1 November 2014.</p> <p>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.</p>	
11 February 2016	The Minister intervened under s 197AB to allow Mr X and his family to reside in community detention.

Health and welfare

Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X is receiving ongoing treatment for an inherited kidney condition, high blood pressure and back pain and has been prescribed with medication to manage these conditions. He was transferred to Australia in November 2014 for specialist review of his kidney condition after an ultrasound identified multiple cysts. His condition is monitored by a general practitioner (GP) with regular blood tests.</p> <p>IHMS further advised Mr X attended specialist counselling after disclosing a history of torture and trauma and has received treatment for the management of depression. He regularly engaged with the mental health team while in restricted detention and was placed on Supportive Monitoring and Engagement observations on 25 June 2015 after presenting with increased anxiety relating to his wife and daughter's health conditions. He has attended psychiatrist appointments since being transferred to community detention and was prescribed with antidepressant medication.</p>
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Ms Y

<p>IHMS advised that Ms Y has received treatment for an iron deficiency, ongoing abdominal pain, a liver disease and scalp lipomas and has been prescribed with medication. Ms Y gave birth to a boy with a severe congenital heart defect in February 2016 who died from the condition two days later. She received postnatal care from a GP and obstetrician with no major concerns noted.</p> <p>IHMS advised that Ms Y has received treatment for significant mental health concerns including depression, anxiety and two suicide attempts associated with concerns about being returned to Nauru RPC. She has required two psychiatric inpatient admissions following the family's return to Australia. Her mental health was exacerbated by her son's death and she requires ongoing mental health support. IHMS advised that psychiatric assessments in April 2015 and July 2016 identified that Ms Y's mental health concerns are likely to get worse if returned to an RPC.</p>	
3 March 2015 – 29 April 2015	Admitted to a psychiatric hospital.
24 June 2015 and 1 July 2015	Incident Reports recorded that Ms Y self-harmed on two occasions.
27 July 2015 – 16 November 2015	Admitted to a psychiatric hospital.
February 2016	Ms Y gave birth to her son who died two days later.

Miss Z

IHMS advised that Miss Z has received treatment for a kidney condition and was referred to a specialist in December 2015 after an ultrasound identified a cyst. This condition requires ongoing monitoring. She was also treated for latent tuberculosis in December 2014.

IHMS further advised that Miss Z has been reviewed by multiple IHMS psychiatrists and psychologists since December 2014 due to concerns relating to anxiety and depression involving nightmares, vomiting, abdominal pains and bedwetting. Following the family's transfer to community detention, her parents requested a referral to a psychologist to address her anxiety. At the time of reporting there was no indication as to whether any appointments had been scheduled or attended.

Other matters

24 October 2014	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 18 August 2015 the AHRC advised that the complaint was finalised without investigation.
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Ombudsman assessment/recommendation

Mr X and his family were detained on 19 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.

Mr X and his family were transferred to an RPC and returned to Australia for medical treatment. 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 their treatment.

The Ombudsman notes the advice from IHMS that Mr X and his family have medical conditions that require ongoing 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 with concern that IHMS has advised that Ms Y's treating psychiatrists have reported that her mental health is highly likely to deteriorate should she return to an RPC.

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 detention indefinitely.

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