

**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).

Name	Ms X (and children)
Citizenship	Stateless (claimed), born in Country A
Year of Birth	1976

Family details

Family members	Ms Y (daughter)	Mr Z (son)
Citizenship	Stateless (claimed), born in Country B	Stateless (claimed), born in Country B
Year of Birth	1995	1996

Family members	Master P (son)	Miss Q (daughter)
Citizenship	Stateless (claimed), born in Country B	Stateless (claimed), born in Country B
Year of Birth	2001	2006

Ombudsman ID	1002431-O
Date of DIBP's reports	20 June 2016 and 18 December 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

20 October 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 860 <i>Rosemead</i> . The family was transferred to an Alternative Place of Detention, Christmas Island.
22 October 2013	Transferred to Christmas Island Immigration Detention Centre.
8 November 2013	Transferred to Nauru Regional Processing Centre (RPC). ¹
9 July 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Brisbane Immigration Transit Accommodation.
10 April 2015	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

<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 the family 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.</p> <p>The family was returned to Australia for Ms X's medical treatment on 9 July 2014.</p> <p>The department has advised that under current policy settings Ms X and her family are not eligible to have their protection claims assessed in Australia and remain liable for transfer back to an RPC on completion of Ms X's treatment.</p>	
30 May 2011	Ms X and her children lodged a Global Special Humanitarian visa application offshore.
2 January 2014	The department invited Ms X to comment on the proposed refusal of her family's offshore visa application on natural justice grounds. Ms X provided a response on 8 January 2014.
29 March 2015	The Minister intervened on under s 197AB to allow the family to reside in community detention.
1 April 2015	Global Special Humanitarian visa application was refused. The family no longer met the guidelines.

Other matters

<p>The department advised that Ms X's husband, Mr R arrived in Australia by sea on 15 April 2010. He was granted a Protection visa on 6 November 2011 and resides in the community.</p> <p>On 16 September 2015 the department approved a variation in Ms X and her children's community detention placement to allow Mr R to reside with the family. However, following alleged domestic violence concerns the variation was revoked on 27 May 2016. The department advised that Mr R now resides separately from the family with parental access and carer arrangements in place.</p>

Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X received treatment for the management of depression, anxiety and incidents of self-harm. Following the family's transfer to Australia on 9 July 2014, she was reviewed by a psychiatrist who noted that her mental state had improved after being reunited with her husband. Following confirmation of Ms X's pregnancy in April 2016 she reported concerns about the wellbeing of her children if they were returned to Nauru RPC. In September 2016 an IHMS medical director advised that Ms X's mental health would significantly deteriorate if returned to Nauru RPC.</p> <p>IHMS further advised that Ms X attended physiotherapy and was prescribed with pain relief medication for ongoing back pain. She was identified as a tuberculosis (TB) contact in October 2014 and was monitored as per state policy. Blood test results in April 2015 identified a prior hepatitis B infection and confirmed that Ms X did not require treatment.</p>	
December 2016	Ms X gave birth to her daughter. ²

² Miss S was born in Australia in December 2016 and has been in detention for less than two years. She is not subject to reporting under s 486N.

Ms Y

IHMS advised that Ms Y required mental health support while held in restricted detention and was reviewed by a psychiatrist in June 2014 after displaying symptoms of depression. Her mental health improved following the family's transfer to Australia, and in particular after being placed in community detention. Following incidents of self-harm she was referred for psychological counselling and was awaiting an appointment at the time of reporting.

IHMS advised that Ms Y was identified as a TB contact in October 2014 and was monitored as per state policy. She was treated for abdominal pain and was reviewed by a specialist for kidney concerns.

15 February 2015 and
27 September 2016

Incident Reports recorded that Ms Y self-harmed and required emergency hospital treatment on two occasions.

Mr Z

IHMS advised that Mr Z disclosed a history of torture and trauma on arrival but declined a referral for specialist counselling. He was in regular contact with the mental health team while in restricted detention and was reviewed by a psychiatrist with his family on 3 August 2014 with no concerns raised.

IHMS further advised that Mr Z was identified as a TB contact in October 2014 and was monitored as per state policy. He received treatment for a minor facial injury and a chest infection.

Master P

IHMS advised that Master P was diagnosed with depression in June 2014 while at Nauru RPC. A psychiatrist and an IHMS medical director strongly recommended he and his family be reunited with their father to prevent further deterioration in his mental health. The family was transferred to Australia on 9 July 2014 and reports following the transfer recorded that Master P's mental state had improved. However, a report from April 2016 recorded that he was anxious and worried about the possibility of being returned to Nauru RPC.

IHMS further advised that Master P was identified as a TB contact in October 2014 and required monitoring as per state policy.

Miss Q

IHMS advised that an IHMS medical director noted that Miss Q's mental health is likely to deteriorate if she is returned to Nauru RPC. IHMS further advised that Miss Q was identified as a TB contact in February 2014 and required monitoring as per state policy.

Ombudsman assessment/recommendation

Ms X and her children were detained on 20 October 2013 after arriving in Australia by sea and have been held in immigration 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 in Australia 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 with concern the advice from an IHMS medical director that Ms X and her children's mental health is likely to deteriorate if the family is returned to an RPC.

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 Ms X and her children'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.