

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O report on Mr X and his son who have remained in immigration detention for a cumulative period of more than 42 months (three and a half years).

The first report 1001895<sup>1</sup> was tabled in Parliament on 18 March 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X (and son)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1979

### Family details

<b>Family members</b>	Master Y (son)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	2007

<b>Ombudsman ID</b>	1003241
<b>Date of DIBP's reports</b>	30 March 2015, 22 September 2015 and 21 March 2016
<b>Total days in detention</b>	1276 (at date of DIBP's latest report)

### Detention history

22 September 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 455 <i>Jagara</i> . Mr X and Master Y were transferred to an Alternative Place of Detention (APOD), Christmas Island.
13 December 2012	Transferred to Inverbrackie APOD.
12 April 2013	Transferred to Sydney Immigration Residential Housing (IRH).
24 October 2013	Mr X was arrested by the Australian Federal Police (AFP) and remanded in custody. Master Y remained at Sydney IRH.
30 October 2013	Mr X was released on bail and transferred to Villawood Immigration Detention Centre (IDC).
7 November 2013	Master Y was placed under the care of Mr X's sister, who resides in the community on a Protection visa, and transferred to her community residence, which was designated as an APOD.
19 June 2014	Master Y remained under the care of Mr X's sister at her community residence, which was redesignated as a community detention placement.
21 November 2014	Mr X was transferred to community detention and reunited with his son.

<sup>1</sup> Mr X and Master Y were previously reported on in a group report.

### Recent visa applications/case progression

12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information <sup>2</sup> and advised that the privacy breach would be taken into account when considering his and his son's protection claims.
19 June 2014	The former Minister intervened under s 197AB to allow Master Y to reside in community detention. The Minister declined to intervene in Mr X's case.
24 October 2014	Mr X's migration agent requested that Mr X and his son's case be referred on a ministerial submission for consideration under s 195A for the grant of a Protection visa.
17 November 2014	The former Minister intervened under s 197AB to allow Mr X to reside in community detention and be reunited with his son.
9 December 2014	Found not to meet the guidelines for referral to the former Minister under s 195A.
22 September 2015	DIBP advised that Mr X is considered a person of interest to DIBP and an external agency.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X and his son to lodge a temporary visa application.
12 November 2015	DIBP invited Mr X and his son to apply for a temporary visa.
14 March 2016	Mr X lodged a Safe Haven Enterprise visa (SHEV) application.
21 March 2016	DIBP advised that Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.

### Other legal matters

24 October 2013	Mr X was arrested and charged by the AFP in relation to alleged people smuggling activities. He was remanded in custody until 30 October 2013 when he was released on bail and transferred to Villawood IDC.
21 May 2014	The charge against Mr X was formally withdrawn and the case was dismissed.

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<sup>2</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

## Health and welfare

### *Mr X*

International Health and Medical Services (IHMS) advised that Mr X received treatment and psychological counselling to manage depression, post-traumatic stress disorder and grief related to the deaths of his wife and two other children when their boat sank off the coast of a transit country on the way to Australia. Improvements in his condition were reported after he was reunited with his son and transferred to community detention.

IHMS further advised that Mr X was diagnosed with a spinal condition and provided with specialist treatment and physiotherapy. He was referred to a physiotherapist and is monitored by a general practitioner.

### *Master Y*

IHMS advised that Master Y was diagnosed with anxiety and associated behavioural issues due to grief and his separation from his father. Improvements in his condition were reported after he was reunited with his father and transferred to community detention.

## Other matters

4 August 2014

Mr X lodged a complaint with the Ombudsman's office in relation to his prolonged separation from his son. On 16 September 2014 DIBP provided its response and on 22 October 2014 the complaint was finalised. Mr X was reunited with his son on 21 November 2014.

Mr X's sister and two brothers are holders of Protection visas and reside in the Australian community.

## Case status

Mr X and his son were detained on 22 September 2012 after arriving in Australia aboard SIEV *Jagara* and have been held in detention for over three and a half years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Mr X and his son to apply for a temporary visa and on 14 March 2016 Mr X and his son lodged a SHEV application.