

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABELING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O report on Mr X and his family who remained in immigration detention for more than 36 months (three years).

The first report 1001837¹ was tabled in Parliament on 3 December 2014. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1982
Total days in detention	1,097 (at date of DIBP's latest report)

Family details

Family members	Ms Y (wife)	Master Z ² (son)
Citizenship	Country A	Country A, born in Country B
Year of birth	1988	2007
Total days in detention	1,097 (at date of DIBP's latest report)	

Family members	Master Q (son)	Miss R ³ (daughter)
Citizenship	Country A, born in Country B	Country A, born in Australia
Year of birth	2011	October 2012
Total days in detention	1,097 (at date of DIBP's latest report)	Not provided

Ombudsman ID	1003288
Date of DIBP's reports	23 February 2015 and 25 August 2015

Detention history

23 August 2012	Mr X and his family were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 419 <i>Zilzie</i> , indicating that they may have arrived as 'direct entry persons'. ⁴ The family was transferred to Darwin Airport Lodge Alternative Place of Detention.
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¹ Mr X and his family were previously reported on in a group report of people who arrived on SIEV 419 *Zilzie*.

² Master Z is Mr X's son from a previous marriage.

³ Miss R was born in Australia in October 2012 and was previously reported on in a group report of children born in Australia between September 2012 and December 2012. She was detained on 23 October 2012 and previously reported on in Ombudsman report 1002167. She is now included in her family's report.

⁴ A maritime arrival to Australia's mainland who is seeking protection. Maritime arrivals who arrived as 'direct entry persons' after 13 August 2012 and before 20 May 2013 are not subject to the s 46A bar.

11 December 2012	Transferred to community detention.
29 October 2015	Granted Bridging visas and released from detention.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Mr X and his family were part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A.	
13 March 2014	DIBP notified Mr X and his family of the unintentional release of personal information ⁵ and advised that the privacy breach would be taken into account when considering the family's protection claims.
11 August 2015	Mr X and his family's case was referred on a ministerial submission for consideration to lift the bar under s 46A.
13 August 2015	The Minister lifted the bar under s 46A to allow Mr X and his family to lodge a temporary visa application.
18 August 2015	DIBP invited Mr X and his family to lodge a temporary visa application.
29 October 2015	Granted Bridging visas.

Health and welfare

Mr X

4 September 2012	International Health and Medical Services (IHMS) advised that a previous hepatitis B infection was identified during routine pathology testing. Mr X is immune and non-infectious.
April 2013 and May 2013	Mr X attended two assessments with a family and domestic violence counselling service following a number of alleged domestic violence incidents. IHMS advised that he was transferred to alternative accommodation during these periods. No further information was provided.
17 November 2014	Presented to a general practitioner (GP) with symptoms of insomnia, stress, anxiety, low mood and poor appetite. He was prescribed with medication and his mental health continued to be monitored by the GP.
11 December 2014	Presented to a GP with persistent lower back and neck pain with associated tenderness. He was prescribed with pain relief medication but declined a referral for physiotherapy.
24 March 2015	Prescribed with an alternative pain relief medication following ongoing back pain.

⁵ 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.

30 March 2015	During a review with a GP, Mr X reported that his back pain had improved. He was referred for an x-ray for further investigation, however IHMS could not confirm whether he attended the referral.
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Ms Y

23 August 2012	Ms Y informed IHMS that she was pregnant. She was referred for antenatal care.
October 2012	Ms Y gave birth to her daughter without complication.
10 April 2013	A DIBP Incident Report recorded that Ms Y reported to her caseworker that Mr X had assaulted her during an argument. Mr X was transferred to alternative temporary accommodation and referred for specialist counselling. Ms Y was provided with counselling and educated about domestic violence laws. DIBP advised that a management plan was implemented and the family was monitored.
28 April 2013	A DIBP Incident Report recorded that Ms Y alleged that she had been assaulted by Mr X and had sustained injuries to her head and face. DIBP advised that her case worker was notified and Ms Y was taken to hospital for assessment.
29 April 2013	A DIBP Incident Report recorded that Ms Y had been discharged from hospital the evening before and transferred to temporary accommodation with her two younger children. Child Protection Services were notified of the incident.
29 September 2013	<p>A DIBP Incident Report recorded that Ms Y had contacted the family's case worker and alleged that Mr X had physically assaulted her.</p> <p>The caseworker attended the family's residence to assess Ms Y's well-being and noted injuries to her arm and cheek. Ms Y declined to be transferred to an alternative residence. The case worker reminded Mr X of the laws surrounding domestic violence.</p> <p>The caseworker implemented a safety plan for Ms Y and a follow-up visit was arranged for two days later.</p>
20 August 2014	IHMS advised that while in restricted detention, Ms Y attended psychological and group counselling sessions and parenting classes. Following the family's transfer to community detention, Ms Y reported multiple incidents of alleged domestic violence. The family continued to be monitored by Child Protective Services and their case worker.
11 December 2014	Ms Y's pregnancy was confirmed and she was referred for antenatal care.
23 April 2015	An obstetric scan confirmed her expected due date.

Master Z

18 September 2012	IHMS advised that Master Z had sustained a head injury prior to his arrival in Australia which had resulted in a speech impairment. He was referred to a hospital paediatric clinic for review but was unable to attend as the family was transferred to community detention.
11 September 2013 – 12 September 2013	Master Z was admitted to a children's hospital as he was vomiting blood and suffering severe headaches. He was assessed for an inner ear inflammation, however all tests returned normal results. He was discharged the following day and attended a follow-up appointment with a GP on 13 September 2013 with no concerns reported.
11 July 2014	Admitted to a children's hospital to have his adenoids and tonsils removed, an examination of his ears under anaesthetic and division of a tongue tie.
16 September 2014 and 27 October 2014 and 7 November 2014	Reviewed at a hospital paediatric clinic following ongoing behavioural and developmental concerns, including memory loss and impulsive behaviour. IHMS advised that he was referred to a hospital acquired brain injury unit and for a magnetic resonance imaging (MRI) scan to assess whether his behavioural issues were related to his head injury. He was also referred to child developmental services, however this referral was declined as he was not eligible for Medicare.
November 2014	During a follow-up consultation, it was noted that Master Z's hearing, articulation and sleep apnoea symptoms had improved and his audiology review identified no abnormalities.
21 January 2015 – 29 April 2015	He attended four MRI and hospital specialist appointments. IHMS advised it had not received any documentation from the appointments, however Mr X had consulted with Master Z's GP about the specialist reports.

Master Q

IHMS advised that Master Q did not require treatment for any major physical or mental health issues.

Miss R

DIBP did not provide an IHMS Health Summary Report for Miss R for the period 4 September 2014 to 25 August 2015.

Other matters

28 July 2015	<p>The Ombudsman's office requested information from DIBP about the circumstances of the arrival of a number of people from SIEV 662 <i>Lambeth</i> who were detained on the Australian mainland, apparently as 'direct entry persons', but have been subject to the bar under s 46A.</p> <p>The Ombudsman's office also identified that there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p>
30 July 2015 – 25 August 2015	<p>DIBP advised on four occasions that it expected to provide clarification as soon as information had been sourced from other areas within DIBP.</p>
1 September 2015	<p>The Ombudsman's office opened an investigation into the arrival and detention circumstances of people who arrived in Australian waters on 17 April 2013 aboard SIEV <i>Lambeth</i>.</p> <p>The Ombudsman's office also identified that there may be more arrivals, including Mr X and his family who arrived on SIEV <i>Zilzie</i>, who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p> <p>A response from DIBP was requested by 30 September 2015 but not received.</p>
2 October 2015 – 22 October 2015	<p>DIBP advised on three occasions that its response was awaiting clearance and would be delayed.</p>
13 November 2015	<p>The Ombudsman's office requested further information under its own motion powers into the arrival and detention circumstances of people who arrived in Australian waters between 13 August 2012 and 20 May 2013 who appeared to have been detained on the Australian mainland as 'direct entry persons' but remained subject to the s 46A bar.</p>
26 November 2015	<p>The matter was raised at a meeting with senior DIBP staff and it was requested that a response to the investigation into the people who arrived on SIEV <i>Lambeth</i> be provided to the Ombudsman's office by 10 December 2015.</p>
16 December 2015	<p>DIBP provided a response to the Ombudsman's request for information.</p>
23 December 2015	<p>The Ombudsman notified the Minister for Immigration and Border Protection of his intention to conduct an investigation under his own motion powers into DIBP's administration of the detention of people who arrived in Australian waters on SIEV <i>Lambeth</i>.</p> <p>The Ombudsman further advised the Minister that he would ask DIBP to look further at other boats where the arrivals were detained in Darwin around the same period of time.</p>
25 February 2016	<p>DIBP advised that an internal investigation had commenced to examine the issues raised by the Ombudsman's own motion investigation and that it will keep the Ombudsman advised as this progresses.</p>

20 April 2016

DIBP provided its response to the Ombudsman's investigation.

Ombudsman assessment

Mr X and his family were granted Bridging visas on 29 October 2015 and released from immigration detention.

Mr X and his family were detained on 23 August 2012 after arriving in Australia aboard SIEV *Zilzie* and were held in detention for over three years before being granted Bridging visas.

The Ombudsman notes that DIBP considered that Mr X and his family were subject to the bar under s 46A for more than two and a half years until the Minister lifted the bar on 13 August 2015 to allow Mr X and his family to apply for a temporary visa.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Mr X and his family may not have been subject to the s 46A bar due to their arrival and detention on the Australian mainland as apparent 'direct entry persons' on 23 August 2012.

The Ombudsman notes that DIBP has commenced an internal investigation into the issues raised by the Ombudsman's own motion investigation and provided a response to some of the issues on 20 April 2016. The Ombudsman is considering DIBP's response and makes no recommendations in this report.