

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 have remained in restricted immigration detention for more than 36 months (three years).

The first report 1001538 was tabled in Parliament on 25 February 2015. 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	1971

Family details

Family members	Ms Y (wife)	Ms Z (daughter)	Ms E (daughter)
Citizenship	Country B	Country A, born in Country B	Country A, born in Country C
Year of birth	1976	1995	1997

Family members	Miss F (daughter)	Miss G (daughter)	Master H (son)
Citizenship	Country A, born in Country C	Country A, born in Country C	Country A, born in Country D
Year of birth	1998	2000	2003

Family members	Master J (son)
Citizenship	Country A, born in Country K
Year of birth	2010

Ombudsman ID	1002010
Date of DIBP's reports	9 November 2014 and 18 May 2015
Total days in detention	1,097 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001538), Mr X has remained at Facility N and Ms Y and their six children have remained at Facility O.

Recent visa applications/case progression

17 July 2014	An adverse security assessment was issued, and Mr X was notified of this on 22 July 2014.
27 August 2014	The family's case was re-referred to the Minister for consideration to lift the s 46A bar under the <i>Migration Act 1958</i> to allow them to lodge a Protection visa application.

10 December 2014	The Minister declined to intervene under s 46A to lift the bar and advised that he would reconsider the decision in 2015 following legislative changes.
26 February 2015	The Department of Immigration and Border Protection (DIBP) referred Mr X and his family's case to the Minister for possible intervention under s 197AB and also for Ms Y and their six children to be considered for a Bridging visa under s 195A.
21 April 2015	The Minister agreed to consider intervening under s 197AB to place Ms Y and her six children into community detention. The Minister declined to consider intervening under s 195A.
18 May 2015	The Minister lifted the bar under s 46A to allow Mr X and his family to apply for a Temporary Protection visa (TPV). DIBP advised that Mr X remains the subject of an adverse security assessment and an Interpol Red Notice for alleged terrorism-related offences. DIBP further advised that character assessments had not been initiated.

Health and welfare

Mr X

13 August 2014 and 24 September 2014	International Health and Medical Services (IHMS) advised that Mr X underwent mental health reviews with an IHMS psychiatrist and commenced seeing an IHMS psychologist. On 13 August 2014 the IHMS psychiatrist recommended that due to concerns that Mr X's mental state would deteriorate with ongoing detention and separation from his family, Mr X should be transferred to the community with his family.
5 September 2014 – ongoing	Following a consultation with the general practitioner (GP) about his long-standing history of Crohn's disease and ongoing symptoms, Mr X underwent a computed tomography (CT) scan on 11 September 2014. The CT scan revealed inflammatory changes but no evidence of complications. IHMS reported that his condition was controlled with medication but at times Mr X was non-compliant. He was advised to contact IHMS immediately should his symptoms increase.
28 November 2014	From the end of September 2014 Mr X saw the psychologist on multiple occasions and had reported symptoms of depression and agitation. He was assessed as a very low risk of self-harm due to his strong family ties, however the psychologist recommended further psychiatric review. Mr X has refused further counselling but was aware of self-referral to the mental health team. The IHMS psychologist continued to recommend that Mr X be transferred to Facility O given the significant impact separation from his family and restricted detention were having on his mental health.
29 November 2014 – 26 May 2015	He continued to receive support from the IHMS mental health team (MHT) for adjustment disorder, depression and anxiety.

6 – 9 January 2015	<p>A DIBP Incident Report recorded that Mr X had refused to eat and drink for 24 hours and refused to have contact with detention staff.</p> <p>IHMS reported that Mr X had undertaken food and fluid refusal to protest against his immigration issues. On 9 January 2015, he required an involuntary transfer to hospital for further assessment and treatment. He returned to Facility N the same day.</p>
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Ms Y

17 June 2014 – ongoing	Ms Y attended a hospital glaucoma unit to follow up previously reported headache and eye pain. No medication or treatment was recommended but IHMS advised that she would need to be reviewed annually at the glaucoma unit. An appointment was scheduled for 16 June 2015.
3 July 2014 – 25 July 2014	Attended three physiotherapy appointments for neck pain which had been present since May 2014.
18 July 2014 and 21 October 2014	Reviewed by an ear, nose and throat (ENT) specialist in relation to her deviated nasal septum and multiple allergies. The ENT specialist reported that she was making good progress.
5 November 2014 – ongoing	<p>Following ongoing symptoms related to gastro-oesophageal reflux disease, she attended an appointment with a gastroenterologist and was placed on a waiting list for a gastroscopy.</p> <p>She continued to take prescribed medication and her condition was monitored by the GP.</p>
2 December 2014 – 26 May 2015	Ms Y intermittently declined to see the MHT. IHMS reported on 26 May 2015 that during her most recent appointment (no date provided) with a psychologist she was provided with counselling about her frustration with her situation but there was no indication that she displayed any symptoms which related to a chronic or major acute mental health condition.
19 February 2015 – 26 March 2015	<p>Attended six physiotherapy sessions to treat ongoing back and neck pain.</p> <p>The physiotherapist noted that Ms Y appeared to have spinal dysfunction and stiffness. IHMS advised that a formal diagnosis had not been made by the GP but her condition was monitored.</p>

Ms Z

17 October 2014 – 1 December 2014	<p>During a review by the psychologist Ms Z reported that she had a sense of hopelessness about her family's situation. The psychologist discussed various behavioural modifications to assist her to overcome her difficulties.</p> <p>IHMS advised that while Ms Z's mother continued to refuse permission for Ms Z to have a mental health assessment, the IHMS psychologist continued to monitor her.</p>
2 December 2014 – 18 May 2015	She declined to interact with the MHT but had not been observed to be suffering from any mental health issues or concerns. IHMS advised that Ms Z was aware of the self-referral process for mental health support.

Ms E

24 May 2014 – 28 November 2014	IHMS reported that multiple attempts had been made by the MHT and psychologist to provide Ms E with support and treatment for her previously diagnosed emotional issues. However, her mother refused to let her see IHMS. IHMS advised that, despite Ms E's mother's refusal, it continued to offer outreach support and routine mental health reviews to Ms E.
29 November 2014 – 26 May 2015	Ms E continued to decline to see the MHT for counselling. IHMS reported that no ongoing concerns had been noted.

Miss F

17 June 2014 – 27 November 2014	IHMS reported that Miss F had not presented with any significant mental health concerns.
18 July 2014	Attended an appointment with an ENT specialist to follow up on reported allergies. No change in treatment was recommended and she was monitored by the IHMS GP.
28 November 2014 – 26 May 2015	IHMS reported that it had continued to monitor Miss F's ongoing scoliosis and her breathing and allergy issues, and no concerns had been identified.

Miss G

21 May 2014 – 26 May 2015	IHMS advised that it had attempted on five occasions to conduct a mental health screening assessment for Miss G but her mother declined to let her participate. IHMS reported that Miss G had continued to receive counselling and support from the IHMS psychologist and MHT. She attended appointments with the psychologist on 7 and 13 August 2014 for counselling, but as of 26 May 2015 concern about emotional issues had been resolved.
7 August 2014	Miss G has a history of coeliac disease and was scheduled to see the paediatric gastroenterologist and was booked for a gastroscopy with associated tests. However, Miss G's mother cancelled the appointment. IHMS reported that Miss G remained stable with ongoing monitoring by the IHMS GP and it had confirmed that she had access to appropriate food choices to manage her disease. IHMS advised that Miss G's mother is aware of her dietary requirements and assisted in her meal preparation.
21 May 2015	Referred to an ENT specialist following recurrent tonsillitis. An appointment was scheduled for 27 May 2015.

Master H

22 July 2014	Reviewed by GP concerning his eczema and no further issues were identified.
14 August 2014	Tested positive for a stomach infection. Further examination had been requested but no further information noted.

August 2014	IHMS reported that until August 2014 Master H had received ongoing counselling from the psychologist.
2 December 2014 – 26 May 2015	Master H intermittently used prescribed medicated creams to treat his eczema. He followed up with the GP and no ongoing concerns were noted.
February 2015	The GP noted that Master H and his family presented with stress symptoms about their detention circumstances and visa status. IHMS advised that while Master H's mother had declined to let him and his siblings participate in mental health assessments, IHMS staff continued to monitor his low mood and challenging behaviour.

Master J

22 May 2014 – 1 December 2014	IHMS advised that Master J's mother continued to decline a psychology assessment for him. However IHMS reported that it continued to monitor and provide support to Master J and his family.
2 August 2014	A DIBP Incident Report recorded that Master J placed a small object in his right ear while playing. He was referred to IHMS for assessment.
4 August 2014	Attended a hospital emergency department for further assessment as the object was deep in his ear. He was referred for surgery.
28 August 2014	The object was removed from his ear under anaesthetic. He was discharged from hospital the same day.
9 April 2015	Diagnosed with hand, foot and mouth disease. He was immediately isolated and given medication to assist with associated symptoms.

Other matters

<p>Since 2013 Mr X has lodged multiple complaints with the Ombudsman's office concerning his detention placement and separation from his family. In the first instance the Ombudsman's office referred Mr X to the Department of Immigration and Citizenship, but subsequently investigated his complaint in September 2013 and in May 2014.</p>	
12 May 2014	<p>Mr X lodged a complaint with the Ombudsman's office concerning his placement at Facility N and separation from his family who were placed at Facility O.</p> <p>Following an investigation of why Mr X had been separated from his family, the Ombudsman's office was satisfied with DIBP's reason that it was due to security concerns about Mr X, and that DIBP had explained this to him and to Ms Y when they were transferred from Facility M.</p> <p>The Ombudsman provided a better explanation to Mr X about the reason he had been placed at Facility N and not in Facility O with Ms Y and their children. The complaint was finalised on 9 July 2014.</p>
2 February 2015	DIBP received a complaint from the Australian Human Rights Commission (AHRC) on behalf of Mr X. DIBP responded to AHRC on 25 March 2015. This investigation remains ongoing.

15 April 2015	<p>Mr X lodged a complaint with the Ombudsman's office about his continued placement at Facility N and being separated from Ms Y and their six children. He requested that consideration be given to the information in an Inspector General of Intelligence and Security (IGIS) report which was published in January 2014.¹</p> <p>The Ombudsman's office declined to investigate Mr X's complaint, as it had previously investigated this issue in mid-2014 and Mr X's adverse security assessment had not changed. Based on information already received from DIBP about Mr X's placement, the reasons for declining the investigation were provided to Mr X. The complaint was finalised on 27 April 2015.</p>
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Ombudsman assessment/recommendation

On 17 July 2014 Mr X was issued with an adverse security assessment by the Australian Intelligence Security Organisation (ASIO), and he remains subject to an Interpol Red Notice for alleged terrorism-related offences.

The Ombudsman notes the ASIO assessment that detainees with an adverse security assessment pose a direct or indirect threat to Australia. The Ombudsman further notes the Government's duty of care to detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose.

Mr X has been detained in a separate location to his family since April 2013 because of security concerns. IHMS has highlighted that his psychiatrist and psychologist have both recommended that Mr X be transferred to Facility O or to the community so he can be reunited with his family and to allow his mental health to improve. The Ombudsman notes with concern the long-term impact that prolonged detention and separation from Mr X may be having on his family's mental and physical health.

DIBP advised that on 18 May 2015 the Minister agreed to intervene under s 46A to allow Mr X and his family to apply for a TPV. The Ombudsman recommends that if the family has applied for a TPV, and it has not yet been finalised, that priority be given to progressing and finalising Mr X and his family's TPV application.

¹ *Inquiry into the management of the case of Mr E and related matters*, IGIS, January 2014