

**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 sons who have remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X (and sons)
Citizenship	Country A
Year of birth	1974

Family details

Family members	Master Y (son)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	2007	2010

Ombudsman ID	1002273-O
Date of DIBP's reports	30 December 2015 and 21 June 2016
Total days in detention	908 (at date of DIBP's latest report)

Detention history

24 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 805 <i>Fruitdale</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
16 May 2014	Transferred to Nauru Regional Processing Centre (RPC). ¹
18 October 2014	Returned to Australia and re-detained under s 189(1). The family was transferred to Bladin APOD.
26 October 2014	Transferred to Melbourne Immigration Transit Accommodation.
10 August 2015	Transferred to community detention.

Visa applications/case progression

13 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X and his sons of the unintentional release of personal information. ²
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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.

² 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.

18 October 2014	Mr X and his sons were returned to Australia from Nauru RPC for medical treatment.
3 August 2015	The Minister intervened under s 197AB to allow Mr X and his sons to reside in community detention.
16 March 2016	DIBP confirmed that detainees who arrived in Australia after 19 July 2013 who were transferred to an RPC but returned to immigration detention in Australia for medical reasons remain liable for transfer back to an RPC on completion of their treatment.

Criminal history

12 September 2013	Mr X was convicted of common assault in circumstances of aggravation or racial aggravation. He was fined \$300 and the matter was finalised.
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Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and received specialist counselling for an adjustment disorder and chronic stress. While held in restricted detention, Mr X attended psychotherapy and group counselling and was monitored by the IHMS mental health team (MHT). He was referred for psychological counselling following his transfer to community detention.

Mr X was admitted to hospital on 18 December 2013 for a surgical procedure after being diagnosed with a renal tumour. He attends follow-up reviews with an urologist and no further treatment is required.

IHMS further advised that Mr X was referred to an orthopaedic specialist after presenting with bilateral hip and muscular abnormalities. He continues to be monitored by the general practitioner and prescribed with pain relief medication as required.

25 February 2014	A DIBP Incident Report recorded that Mr X refused food and fluid.
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Master Y

IHMS advised that prior to his transfer to community detention, Master Y received treatment and specialist counselling for multiple mental health concerns, including post-traumatic stress disorder (PTSD), anxiety, depression and behavioural concerns. He presented with sleep disturbance, inability to concentrate, restlessness, persistent vomiting and allegedly displayed inappropriate behaviour towards other detainees on multiple occasions.

IHMS advised that improvements in Master Y's condition were reported following his transfer to community detention and he continues to be monitored by a paediatrician and psychologist.

Master Z

IHMS advised that Master Z was diagnosed with PTSD related to his history of torture and trauma. He attends specialist counselling and improvements in his condition were reported following his transfer to community detention.

IHMS further advised that Master Z receives treatment for weight concerns and latent tuberculosis and continues to be monitored as per state policy.

Detention incidents

3 August 2013	DIBP Incident Reports recorded that Mr X allegedly assaulted Master Z following allegations that he had assaulted other minor detainees. Mr X was referred to the MHT for assessment and Master Y and Master Z were closely monitored by Serco officers. The incident was referred to the police for investigation.
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Other matters

5 November 2014	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 28 August 2015 AHRC advised that the complaint had been finalised.
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Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and his sons were detained on 24 July 2013 after arriving in Australia aboard SIEV *Fruitdale* and have been held in detention for a cumulative period of over two and a half years with no processing of their protection claims.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. Without an assessment of Mr X and his sons' claims to determine if they are found to engage Australia's protection obligations, it appears likely that they will remain in detention for an indefinite period.

The Ombudsman further notes DIBP's advice that because Mr X and his sons were transferred to an RPC but returned to immigration detention in Australia for medical reasons they remain liable for transfer back to an RPC on completion of their treatment.

The Ombudsman recommends that priority is given to exploring options to enable the resolution of Mr X and his sons' immigration status.