

**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 wife who have remained in immigration detention for more than 42 months (three and a half years).

This is also the second s 486O report on the couple's son Master Y who has remained in immigration detention for more than 36 months (three years).

The first report on Mr X and his wife, 1002477, was tabled in Parliament on 16 March 2016. The first report on Master Y, 1002251-O, was tabled in Parliament on 14 September 2016. This report updates the material in those reports and should be read in conjunction with them.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1980
Total days in detention	1276 (at date of DIBP's latest report)

Family details

Family members	Ms Z (wife)	Master Y (son)
Citizenship	Country A	Country A (born in Australia)
Year of birth	1991	2013
Total days in detention	1276 (at date of DIBP's latest report)	Not provided

Ombudsman ID	1001347-O
Date of DIBP's reports	14 April 2016 and 15 October 2016

Recent detention history

Since the Ombudsman's previous reports (1002477 and 1002251-O), Ms Z and Master Y have remained in community detention and Mr X remained in community detention. ¹	
14 January 2016	The Department of Immigration and Border Protection (the department) located Mr X and transferred him to the City B Watch House.
20 January 2016	Mr X was transferred to Facility C.
21 June 2016	Mr X was transferred to Facility D.

Recent visa applications/case progression

29 December 2015	The Minister revoked Mr X's community detention placement under s 197AD of the <i>Migration Act 1958</i> .
------------------	--

¹ Mr X and Ms Z's second son, Master P, was born in Australia in April 2015. He has been in detention for less than two years and at the date of the department's latest report was not subject to reporting under s 486N.

9 March 2016	The Federal Circuit Court dismissed Mr X, Ms Z and Master Y's application for judicial review of the Administrative Appeals Tribunal's (AAT) decision to affirm the refusal of their application for a Protection visa.
26 July 2016	Ms Z lodged a Temporary Protection visa (TPV) application for the family.
29 September 2016	The department found that Mr X and Ms Z were barred under s 48A from applying for a valid TPV. On the same day, the department found Master Y and Master Y's application for a TPV to be valid. On 15 October 2016 the department advised that the matter remained ongoing.
15 October 2016	The department advised that Mr X and Ms Z had no outstanding matters before it or the courts and were on a removal pathway.

Criminal history

The department advised that on 16 September 2015 Mr X returned a positive match against a Five Country Conference check with Country E and was found to have a history of criminal convictions whilst offshore. As a result he has remained a person of interest to the department.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X has not required treatment for any major physical or mental health issues since the Ombudsman's previous report. During a mental health assessment on 28 January 2016 he was said to have again refused a referral for specialist counselling for torture and trauma. He also expressed sadness at not being able to help his wife raise their children. IHMS stated that he participated in activities to distract himself from his sadness.

Ms Z

IHMS advised that Ms Z presented to her community general practitioner (GP) with stress and associated depression in February 2016 in relation to her husband being transferred to restricted detention in January 2016. She stated that she was caring for the couple's two children on her own. The GP referred her to counselling. In March 2016 she attended the first of a series of counselling sessions with a psychologist to assist with stress management and develop coping strategies. She reported some improvement after attending several sessions.

She presented to the GP again in August 2016 about the same matters. The GP was said to be continuing to provide ongoing support and monitor her mental health.

IHMS further advised that Ms Z also continued to receive treatment for chronic lower back pain.

Master Y

IHMS advised that Ms Z had informed the GP of her concerns that Master Y had been crying a lot, not eating or sleeping well, and missing his father who had been returned to restricted detention. At a further consultation in March 2016 the GP noted that Master Y's unsettled behaviours were continuing.

In April 2016 Master Y was reviewed by the GP again as Ms Z was concerned that he was still not talking. It was subsequently reported that this issue could have a psychological cause and he was referred to speech therapy with an appointment pending.

IHMS further advised that Master Y received treatment for eczema.

Information provided by Ms Z

During a telephone conversation with Ombudsman staff on 30 November 2016 Ms Z advised she had requested a transfer to a locality closer to the Country A community in City B but this had been refused.

She would spend the day taking care of the children, cleaning the house, washing clothes and the dishes, and preparing meals. She would call her family in Country A sometimes. She did not have any relatives in Australia but had a few friends she had met while in restricted detention.

Together with her children she would go to English classes on Tuesday mornings and to a play activity for children on Thursdays.

No-one helped with looking after the children except sometimes she would ask friends to mind them along with their own children when she was busy.

She said her children missed their father and wanted to be reunited. During a telephone conversation with Ombudsman staff on 30 January 2017 she advised they would like Mr X to be transferred to City B.

Ombudsman assessment/recommendation

Mr X and his wife have been found not to be owed protection under the Refugee Convention and the complementary protection criterion and have been held in detention for more than three and a half years. They have no matters before the department, the courts or tribunals and are on a removal pathway.

Master Y has been held in detention for more than three years. The department is currently assessing a TPV application for Master Y and his younger brother.

The Ombudsman notes that Mr X is being held at Facility D in State E while Ms Z and the children are in community detention in City B in State F. The Ombudsman strongly recommends that given the impact of the family's separation, Mr X be considered for transfer to City B so his wife and children may see him.