

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 family who have remained in immigration detention for more than 24 months (two years).

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| Name | Mr X (and family) |
| Citizenship | Country A |
| Year of birth | 1980 |

Family details

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| Family members | Ms Y (wife) |
| Citizenship | Country A |
| Year of birth | 1985 |

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| Family members | Master Z (son) | Miss Q (daughter) |
| Citizenship | Country A | Country A |
| Year of birth | 2003 | 2005 |

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| Family members | Miss R (daughter) | Master S (son) |
| Citizenship | Country A | Country A |
| Year of birth | 2006 | 2011 |

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| Ombudsman ID | 1003050 |
| Date of DIBP's report | 20 July 2015 |
| Total days in detention | 735 (at date of DIBP's report) |

Detention history

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| 15 July 2013 | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 789 <i>Gayfers</i> . The family were transferred to Facility B. |
| 3 August 2013 | Transferred to Facility C. |
| 2 July 2014 | Transferred to community detention. |
| 1 January 2015 | The Department of Immigration and Border Protection (DIBP) advised that Mr X was transferred to alternative temporary accommodation following an alleged domestic violence incident. |
| 9 February 2015 | Mr X was reunited with his family. |

Visa applications/case progression

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| DIBP advised that Mr X and his family are part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A(2). | |
| 29 August 2013 | The Minister agreed to consider granting Mr X and his family Bridging visas under s 195A. However, following a change in government policy on 8 July 2014, the Minister intervened under s 197AB and the family were transferred to community detention. |
| 12 March 2014 | Mr X and his family were issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ¹ |

Health and welfare

Mr X

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| July 2013 | International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and initially declined specialist counselling. It was noted that Mr X was experiencing poor sleep and constant thoughts about his past. His mental health continues to be monitored by his general practitioner (GP). |
| 22 August 2013 | IHMS advised that Mr X disclosed a history of renal stones and had previously undergone treatment for a hernia. He was referred for an ultrasound of his kidneys and lower abdomen following recurring abdominal and groin pain. The scans identified a urinary abnormality and he was referred to a hospital urology clinic for further investigation. |
| 6 February 2014 | Attended specialist psychological counselling. |
| March 2014 | Attended an appointment at the hospital urology clinic and was diagnosed with a urinary condition. He was referred for a cystoscopy for further investigation. His GP continues to monitor his condition. |
| 9 November 2014 | Admitted to hospital after presenting to his GP with abdominal pain. He was diagnosed with appendicitis and underwent surgery. IHMS advised that he was provided with pain relief medication and discharged the following day with advice to attend an appointment with the outpatient's clinic. |

Ms Y

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| 14 August 2013 | Reviewed by a psychologist after disclosing a history of torture and trauma. IHMS advised that she attended specialist counselling and remained in contact with the mental health team until early 2014. |
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¹ 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.

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| 20 March 2014 - 24 April 2014 | Attended 12 physiotherapy appointments during this period for treatment of ongoing headaches and shoulder pain. No further concerns have been raised in relation to this condition. |
| 4 October 2014 | Presented to her GP with poor sleep, depressed mood, irritability and anxiety. She was prescribed with antidepressant medication and was referred to a psychologist. IHMS advised that this appointment remained outstanding at the time of its report. |

Master Z

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| July 2013 | Mr X and Ms Y reported that Master Z experiences night-time incontinence and that traditional therapies were ineffective. In September 2013 a urinary ultrasound was conducted with no abnormalities identified and he was referred to a continence clinic. IHMS was awaiting confirmation of this appointment at the time of its report. |
| 18 February 2014 | Admitted to a hospital emergency department after injuring his left elbow at school. An x-ray identified a fracture. He was provided with pain relief medication and his arm was placed in a sling. |
| 20 March 2014 - 10 April 2014 | Attended four physiotherapy sessions for treatment of his elbow fracture. |
| 20 October 2014 | A chest x-ray was conducted after he returned a positive mantoux test. No abnormalities were identified and he was referred to a hospital health clinic for further assessment. |

Miss Q

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| IHMS advised that Miss Q has not required treatment for any major physical or mental health issues. |
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Miss R

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| September 2013 | IHMS advised that Ms Y reported that Miss R had experienced torture and trauma prior to her arrival in Australia. Miss R attended counselling appointments and was reviewed by a psychiatrist and psychologist who noted improvements in her condition. |
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Master S

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| 6 September 2013 | Admitted to a hospital emergency department after hitting his head on a table. No further information was provided. |
| 10 July 2014 | Transferred to hospital by ambulance after experiencing convulsions related to a fever. He attended a follow-up appointment with his GP the following day who noted improvements in his condition. |

Detention incidents

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| 1 January 2015 | <p>A DIBP Incident Report recorded that Mr X and Ms Y were involved in a verbal altercation. The police were contacted after Ms Y alleged that Mr X had hit her. Police attended the residence and took statements from Mr X and Ms Y.</p> <p>DIBP advised that Ms Y later reported that Mr X had not hit her and that she had hit herself out of frustration.</p> <p>The family's case worker contacted Child Protection Services and Mr X was transferred to temporary accommodation for a period of five weeks.</p> |
| 9 February 2015 | <p>Mr X attended court and an Intervention Order was issued. Mr X was not charged and returned to the family's community detention residence on the same day.</p> |

Ombudsman assessment/recommendation

The Ombudsman notes that Mr X and his family were detained on 15 July 2013 after arriving in Australia aboard SIEV *Gayfers* and have been held in detention for over two years with no processing of their protection claims.

The Ombudsman notes with concern that without an assessment of the family's 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 notes the Minister's recent Statements to Parliament, in which he advises that DIBP is progressing the substantial caseload of maritime arrivals, and will provide him with advice to assist his consideration of whether to lift the bar to allow these people to lodge a Temporary Protection visa application.

The Ombudsman recommends that the Minister lift the bar under s 46A and processing of the family's protection claims commence as soon as possible.