

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 Ms X and her son who have remained in immigration detention for more than 42 months (three and a half years).

The first report 1002938 was tabled in Parliament on 14 October 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Ms X
Citizenship	Country A
Year of birth	1972

Family details

Family members	Mr Y
Citizenship	Country A
Year of birth	1991

Ombudsman ID	1003466
Date of DIBP's reports	29 September 2015, 1 April 2016 and 30 September 2016
Total days in detention	1276 (at date of DIBP's latest report)

Detention history

3 April 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 641 <i>Porsche</i> . The family was transferred to an Alternative Place of Detention (APOD), Christmas Island.
2 May 2014	Transferred to Adelaide Immigration Transit Accommodation.
23 June 2014	Transferred to community detention.
12 August 2016	Mr Y was transferred to Adelaide Immigration Transit Accommodation after his community detention placement was revoked. Ms X continues to reside in community detention.

Recent visa applications/case progression

8 May 2014	The former Minister intervened under s 197AB to allow Ms X and her son to reside in community detention.
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12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Ms X and her son of the unintentional release of personal information ¹ and advised that the privacy breach would be taken into account when considering their protection claims.
29 September 2015	The Minister lifted the bar under s 46A to allow Ms X and her son to lodge a temporary visa application.
23 October 2015	Mr Y was notified he was eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a temporary visa application. He accepted the offer on 12 November 2015 and advised DIBP that he would apply as a family group with his mother and her brother-in-law. ²
28 October 2015	Ms X was invited to apply for a temporary visa.
23 December 2015	Ms X lodged an incomplete Safe Haven Enterprise visa (SHEV) application.
26 February 2016	DIBP notified Ms X that her family's SHEV application was incomplete. On 7 March 2016 DIBP received the missing documentation.
26 April 2016	Ms X and her son were notified they were eligible to receive PAIS to assist with lodging a new temporary visa application or to provide further information for their current SHEV application. Ms X and her son accepted the offer that day.
4 August 2016	The Minister revoked Mr Y's community detention placement under s 197AD following criminal offences.

Other legal matters

16 August 2016	Mr Y appeared before a court after being charged with indecently assaulting a minor. He was ordered to undergo a psychiatric assessment before his next court appearance scheduled for 27 October 2016.
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Health and welfare

Ms X

<p>International Health and Medical Services (IHMS) advised that Ms X was provided with treatment for multiple physical health issues including musculoskeletal pain, a skin condition and gynaecological concerns. Her skin condition and gynaecological concerns were resolved following treatment with prescription medication.</p> <p>She also presented with back pain and a computed tomography scan of her spine in May 2015 identified abnormalities. She was referred for physiotherapy and to a podiatrist. The general practitioner (GP) continues to prescribe pain relief medication to use as required.</p> <p>In September 2013 she disclosed a history of torture and trauma related to the death of her husband and being the main carer for her intellectually disabled adult son. She attended specialist counselling and while in restricted detention was supported by the mental health team.</p>

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.

² Ms X arrived with her brother-in-law, Mr Z who was granted a Bridging visa on 14 March 2015.

Mr Y

IHMS advised that Mr Y has a developmental delay which has been evident since childhood. He is hygienically independent but is dependent on his mother for support in all other aspects of life. He is supported by a team of specialists and allied health professionals including a psychiatrist and an occupational therapist.

In October 2013 he disclosed a history of torture and trauma and attended specialist counselling. DIBP Incident Reports also recorded he self-harmed on three occasions by hitting himself on the head or banging his head on a wall.

In July 2016 he was reviewed by a psychologist who recommended he undergo a comprehensive neurological assessment to confirm his diagnosis and ensure he is receiving appropriate treatment.

IHMS advised that when Mr Y was returned to restricted detention in August 2016 an individual care plan and detailed management plan were developed to support his complex needs. He is eligible for disability support services and was awaiting an appointment. An IHMS GP manages and coordinates specialist referrals to assist him through a targeted approach.

Recent detention incidents

DIBP Incident Reports recorded that Mr Y has allegedly been involved in multiple incidents of inappropriate, disruptive and abusive/aggressive behaviour and damage to property while in restricted detention. Spontaneous use of force was required on several occasions to prevent Mr Y from harming other detainees and damaging property.

Other matters

27 November 2015	<p>Ms X lodged a complaint with the Ombudsman's office alleging that items of her personal property were not returned to her when she arrived at Christmas Island.</p> <p>Following an investigation, the Ombudsman's office provided Ms X with advice about progressing the matter with DIBP. The complaint was finalised on 2 March 2016.</p>
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Case status

Ms X and her son were detained on 3 April 2013 after arriving in Australia aboard SIEV *Porsche* and have been held in detention for over three years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Ms X and her son to apply for a temporary visa and on 23 December 2015 Ms X lodged an application for a SHEV which included her son, Mr Y, and her brother-in-law, Mr Z.