

**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 sons. Mr X has remained in immigration detention for a cumulative period of more than 54 months (four and half years). His sons have remained in immigration detention for more than 48 months (four years).

The first report 1002793 was tabled in Parliament on 25 November 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1958
<b>Total days in detention</b>	1640 (at date of DIBP's latest report)

**Family details**

<b>Family members</b>	Master Y (son)	Master Z (son)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	2006	2007
<b>Total days in detention</b>	1421 (at date of DIBP's latest report)	1421 (at date of DIBP's latest report)

<b>Ombudsman ID</b>	1001592-O
<b>Date of DIBP's reports</b>	21 December 2015, 14 June 2016 <sup>1</sup> and 5 November 2016

**Recent detention history**

Since the Ombudsman's previous report (1002793), Mr X remained at Facility B in City C and his sons remained at an Alternative Place of Detention in City C.	
12 August 2015	Mr X's sons were transferred to community detention in City D under the care of a contracted service provider.
14 August 2015	Mr X was transferred to the custody of the police at a police station in City D.
21 August 2015	Mr X was transferred to Facility E in City D.
11 September 2016	Mr X was transferred to Facility B.
15 September 2016	Mr X was transferred to Facility E.

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<sup>1</sup> The department advised on 14 June 2016 that it had not been meeting its statutory obligations in relation to providing Mr X's reports as, due to a system error, the 226 days Mr X had spent in Australia following his first arrival in Australia on 11 October 1999 were not taken into account. DIBP advised that further reports for Mr X and his sons would be provided based on the correct accumulated days for Mr X.

The Department of Immigration and Border Protection (the department) advised that Mr X's sons were escorted on visits to him at Facility E twice a week and also had contact with their half-brothers who lived in City D.

#### Recent visa applications/case progression

The department advised that prior to ministerial intervention, Mr X and his sons were part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A of the <i>Migration Act 1958</i> .	
15 July 2015	Mr X withdrew a request made on 30 June 2015 for voluntary removal from Australia for himself and his sons.
6 August 2015	Mr X and his sons were referred to the Minister for consideration of a community detention placement under s 197AB.
12 August 2015	The Minister agreed to intervene under s 197AB to allow Mr X's sons to reside in community detention. The Minister declined to intervene in Mr X's case.
22 August 2015	Mr X again requested voluntary removal from Australia for himself and his sons.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X and his sons to lodge a temporary visa application.
14 June 2016	The department invited Mr X and his sons to apply for a temporary visa.
1 July 2016	Mr X withdrew his second request for voluntary removal from Australia for himself and his sons.
13 October 2016	Mr X and his sons lodged a Temporary Protection visa (TPV) application. On 5 November 2016 the department advised the matter remained ongoing.

#### Criminal history

14 August 2015	Mr X was transferred to State F and taken into police custody at a police station in relation to ongoing court proceedings.
27 August 2015	Mr X was convicted in relation to criminal behaviour dating back to 2003 and directed to enter into a good behaviour bond for 12 months. The charges related to a break, enter and steal offence, malicious damage, traffic offences and other matters relating to fraud.

## Health and welfare

### Mr X

<p>International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment and monitoring for type 2 diabetes. IHMS further advised that Mr X had been fully treated for a latent tuberculosis (TB) infection and was discharged from treatment at a TB clinic.</p> <p>IHMS advised that while Mr X had not been formally diagnosed with a mental health problem, it had been reported in his mental health assessment of June 2015 that he was very angry and frustrated at his family's ongoing detention and perceived lack of support. He had described the alleged sexual assault of his son as traumatic. It was reported that he was clearly struggling with prolonged detention. IHMS subsequently advised on 15 September 2016 that Mr X had not required mental health support for any major mental health issues in the previous six months.</p>	
6 July 2015	An Incident Report recorded that Mr X threatened self-harm on a request form that he had submitted.
3 September 2015	An Incident Report recorded that Mr X was the alleged victim in an altercation.

### Master Y

<p>IHMS advised that no further issues were documented after Master Y had been identified as a victim of sexual assault in April 2015 and subsequently diagnosed with an acute distress disorder. He received counselling from a specialist service until 4 August 2015 and his mental well-being was monitored by his community general practitioner.</p>	
5 March 2016	An Incident Report recorded that Master Y was allegedly assaulted by a staff member when visiting his father at Facility E. He stated that the staff member pushed him against a wall and he sustained a graze on his right shoulder and two superficial bruises on his hand.
9 March 2016	An Incident Report recorded that Master Y attended a medical centre for assessment following the alleged assault and was noted to have an abrasion in the right shoulder area.

### Master Z

<p>IHMS advised that Master Z has not required treatment for any major physical or mental health issues.</p>	
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## Other matters

1 May 2015	The Australian Human Rights Commission (AHRC) notified the department of a complaint by Mr X and on 12 April 2016, after investigation, that there had been a breach of Mr X's human rights. On 19 July 2016 the AHRC requested that the department provide further information and documents. On 5 November 2016 the department advised that it was finalising its response to the AHRC.
<p>The department advised that on 12 September 2016 Mr X appeared as a witness before a Supreme Court to give evidence in relation to the alleged sexual assault of Master Y. DIBP stated that the matter had tentatively been set down for trial between December 2016 and April 2017.</p>	

DIBP advised that Mr X's sons from a previous marriage, Mr P, Mr Q and Mr R were currently residing lawfully in the community in State F.

#### **Information provided by Mr X**

During an interview with Ombudsman staff at Facility E on 20 July 2016 Mr X referred to having previously been in a different city from his minor and adult children but advised they were now all in City D. He talked in some detail about the alleged sexual assault of Master Y at Facility B in 2015 and expressed considerable grief and anger over this matter.

He said that he had been in detention for over seven years, three years in Country G and four years in Australia. He questioned why he was still in detention given what had happened to his son.

He said that he had developed diabetes and high cholesterol after arriving in Australia and was taking medication for these conditions.

#### **Case status**

Mr X was re-detained on 15 December 2012 after re-entering Australia aboard SIEV *Quest* and has been held in restricted detention for a cumulative period of over four and a half years.

Master Y and Master Z were detained on 15 December 2012 after arriving in Australia aboard SIEV *Quest* and have been held in detention for over four years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Mr X and his sons to apply for a temporary visa and on 13 October 2016 Mr X and his sons lodged a TPV application.