

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the fourth s 486O report on Mr X and his sons who have remained in immigration detention for more than 60 months (5 years).

The first report 1001300 was tabled in Parliament on 28 May 2014, the second report 1001534 was tabled in Parliament on 25 February 2015 and the third report 1001998 was tabled in Parliament on 9 September 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1969
Total days in detention	1822 (at date of DIBP's latest report)

Family details

Family members	Master Y (son)	Master Z (son)
Citizenship	Country A	Country A
Year of birth	2001	2006

Ombudsman ID	1000897-O
Date of DIBP's reports	5 November 2015, 5 May 2016 and 3 November 2016

Recent detention history

Since the Ombudsman's previous report (1001998), Mr X and his sons have remained in community detention.

Recent visa applications/case progression

15 June 2015	The Department of Immigration and Border Protection (DIBP) finalised an International Treaties Obligations Assessment (ITOA), determining Mr X and his sons' case did not engage Australia's <i>non-refoulement</i> obligations.
5 November 2015	DIBP advised Mr X had been identified as a person of interest in relation to offshore criminal matters.
13 April 2016	The Minister lifted the bar under s 46A to allow Mr X and his sons to lodge a temporary visa application.
21 April 2016	DIBP invited Mr X and his sons to lodge to a temporary visa application.

5 May 2016	DIBP advised that Mr X and his sons' case was affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ¹ which found that the ITOA process was procedurally unfair.
19 May 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a temporary visa application. He accepted the offer on 30 May 2016 including his children as dependents and was assigned a PAIS provider.
27 July 2016	The Minister appealed the FFC decision and the High Court (HC) found that the ITOA process was not procedurally unfair. ²
29 September 2016	Lodged a Safe Haven Enterprise visa (SHEV) application.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X received treatment and was prescribed with antidepressant medication for major depression.

IHMS also advised Mr X received treatment and prescribed with pain relief medication for chronic chest and left knee pain. He has been referred for specialist review of each condition and is awaiting notification of appointment dates.

Master Y

IHMS advised that Master Y received treatment and was prescribed with medication for an ongoing respiratory tract infection. He was awaiting a follow up chest x-ray at the date of IHMS's latest report of 26 September 2016.

Master Z

IHMS advised that Master Z received treatment and was prescribed with medication for asthma.

9 June 2015	A DIBP Incident Report recorded that Master Z was admitted to hospital for two nights for an asthma attack.
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Recent detention incidents

1 July 2016	A DIBP Incident Report recorded that Master Y left his community detention residence to participate in a ten-day sporting event in another city, without seeking prior approval.
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Other matters

Master Y and Master Z's mother, Ms P, resides in the community in Queensland on a Bridging visa.

¹ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

² Minister for Immigration and Border Protection & Anor v SZSSJ & Anor [2016] HCA 29.

Case status

Mr X and his sons have been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

On 13 April 2016 the Minister lifted the bar under s 46A to allow Mr X and his sons to lodge a temporary visa application and on 29 September 2016 they lodged a SHEV.

The Ombudsman notes that Mr X and his family arrived in Australia by boat on 8 November 2011 and that Mr X and his sons have now been held in detention for more than five years.