

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

*Under s 486O of the Migration Act 1958*

This is the third s 486O report on Ms X<sup>1</sup> and her children<sup>2</sup> who have remained in immigration detention for a cumulative period of more than 48 months (four years).

The first report 1001385 was tabled in Parliament on 18 June 2014 and the second report 1001638 was tabled in Parliament on 13 May 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Ms X (and children)
<b>Citizenship</b>	Country A, born in Country B
<b>Year of birth</b>	1984

### Family details

<b>Family members</b>	Miss Y (daughter)	Master Z (son)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	2004	2006

<b>Ombudsman ID</b>	1002812
<b>Date of DIBP's reports</b>	22 June 2015 and 16 December 2015
<b>Total days in detention</b>	1,458 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001638), Ms X and her children have remained in community detention.

The Department of Immigration and Border Protection (DIBP) advised that Ms X's husband, Mr Q, resides with the family in community detention. Mr Q is the subject of Ombudsman report 1003340.

### Recent visa applications/case progression

15 January 2015	DIBP notified Ms X and her children of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of their case engage Australia's <i>non-refoulement</i> obligations.
1 July 2015	DIBP advised Ms X and her children that it had commenced a second ITOA to assess whether the circumstances of their case engage Australia's <i>non-refoulement</i> obligations.
20 July 2015	DIBP invited Ms X and her children to comment on information regarding the ITOA. DIBP advised that it did not receive a response from Ms X and her children.

<sup>1</sup> Ms X's name and year of birth were previously recorded as Ms S and 1989. DIBP's review of 16 December 2015 recorded her name as Ms X and her year of birth as 1984.

<sup>2</sup> Master R was born in Australia in April 2014 and detained on 22 May 2014. He has been in detention for less than two years and is not subject to reporting under s 486N.

14 August 2015	DIBP finalised the ITOA and found that Ms X and her children's case did not engage Australia's <i>non-refoulement</i> obligations.
21 March 2016	DIBP advised that Ms X and her children's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) <sup>3</sup> which found that the ITOA process was procedurally unfair. On 21 March 2016 the Minister filed an application in the High Court (HC) for special leave to appeal the FFC's decision.

### Health and welfare

#### Ms X

18 November 2015 – ongoing	International Health and Medical Services (IHMS) advised that Ms X continues to be monitored and treated with medication for an underactive thyroid.
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#### Miss Y

IHMS advised that Miss Y has not required treatment for any major physical or mental health issues since its previous report to the Ombudsman.

#### Master Z

IHMS advised that Master Z has not required treatment for any major physical or mental health issues since its previous report to the Ombudsman.

3 December 2015	A DIBP Incident Report recorded that Master Z attended hospital to remove his tonsils and adenoids.
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### Case status

Ms X and her children have been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

Ms X and her children's case is also affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. On 21 March 2016 the Minister filed an application in the HC for special leave to appeal the FCC's decision.

<sup>3</sup> SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.