

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O report on Mr X and his family who have remained in immigration detention for more than 66 months (five and a half years). The previous reports are:

Report 1221/13 tabled in Parliament on 4 December 2013

Report 1001286 tabled in Parliament on 25 June 2014

Report 1001519 tabled in Parliament on 3 December 2014

Report 1001970 tabled in Parliament on 17 June 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	1983
Total days in detention	2005 (at date of DIBP's latest report)

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country A	Country A, born in Australia
Year of birth	1991	2011
Total days in detention	2005 (at date of DIBP's latest report)	1649 (at date of DIBP's latest report)

Ombudsman ID	1002471
Date of DIBP's reports	5 May 2015, 31 October 2015 and 2 May 2016

Recent detention history

Since the Ombudsman's previous report (1001970), Mr X and his family have remained in community detention.

Recent visa applications/case progression

15 January 2015	The Department of Immigration and Border Protection (DIBP) notified Mr X and his family 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. DIBP also requested further information from the family to support their protection claims.
12 May 2015	DIBP invited the family to comment on information relevant the ITOA. A response was provided on 29 June 2015.

15 July 2015	DIBP finalised the ITOA, determining the family's case did not engage Australia's <i>non-refoulement</i> obligations.
31 October 2015	DIBP advised that the family's case is 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.
21 March 2016	The Minister filed an application in the High Court (HC) for special leave to appeal the FFC's decision.
13 April 2016	The Minister lifted the ss 46A and 48B bars to allow the family to lodge a temporary visa application.

Health and welfare

Mr X

22 November 2014 – 12 May 2015	DIBP did not provide an International Health and Medical Services (IHMS) Health Summary report for Mr X.
13 May 2015 – 22 March 2016	IHMS advised that Mr X had not required treatment for any major physical or mental health issues.

Ms Y

22 November 2014 – 8 May 2015	Ms Y continued to be treated for depression, an adjustment disorder and anxiety. She attended five counselling sessions with a psychologist, who recommended that she speak with a general practitioner (GP) about further counselling and trialling medication. IHMS advised that she did not follow this up.
9 May 2015 – 22 March 2016	IHMS reported that Ms Y did not present with any major or acute mental health problems. IHMS advised that her mental health issues are resolved.
2 July 2015 – ongoing	Ms Y experienced ongoing ear issues following surgery in 2014 and requested a referral to an ear, nose and throat (ENT) specialist. The GP diagnosed her with an inner ear inflammation and prescribed medication to treat her associated dizziness. An ENT review was pending.
10 February 2016 – ongoing	Following a car accident, she complained of headaches, neck pain and further dizziness. A computed tomography scan identified no abnormalities, however due to ongoing dizziness and some numbness she was referred to a neurologist for review.

Master Z

14 November 2014 – ongoing	The GP continued to treat Master Z's ongoing ear issues and ear infections. He commenced speech pathology in April 2015 and attended eight sessions.
February 2016	Referred for an ultrasound with a suspected umbilical hernia. IHMS advised no further information was available.

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

Case status

Mr X and his family were detained on 5 November 2010 after arriving in Australia aboard Suspected Illegal Entry Vessel *Lambton* and have held in detention for over five and a half years.

On 13 April 2016 the Minister lifted the bar under s 46A to allow the family to lodge a temporary visa application. The family is awaiting an invitation to apply for a temporary visa.

The family's case is 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 FFC's decision.