

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 Mr X and his sons who have remained in immigration detention for more than 54 months (four and a half years).

The first report 1001460 was tabled in Parliament on 9 July 2014 and the second report 1001818 was tabled in Parliament on 25 June 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X (and sons)
Citizenship	Country A
Year of birth	1958

Family details

Family members	Master Y (son)	Master Z (son)
Citizenship	Country A, born in Country B	Country A, born in Country B
Year of birth	2000	2006

Ombudsman ID	1003272
Date of DIBP's reports	21 August 2015, 19 February 2016 and 18 August 2016
Total days in detention	1640 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001818), Mr X and his sons have remained in community detention.

Recent visa applications/case progression

7 April 2015	The Department of Immigration and Border Protection (DIBP) finalised the International Treaties Obligations Assessment (ITOA), determining the family's case did not engage Australia's <i>non-refoulement</i> obligations.
6 May 2015	Found not to meet the guidelines for referral to the Minister under ss 417 and 48B of the <i>Migration Act 1958</i> .
19 February 2016	DIBP advised that the family's 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. The Minister appealed the FFC decision and on 27 July 2016 the High Court found that the ITOA process was not procedurally unfair. ²
13 April 2016	The Minister lifted the bars under ss 46A and 48B to allow the family to lodge a temporary visa application.

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.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X has received treatment for multiple physical health concerns including musculoskeletal pain and hearing abnormalities.

Master Y and Master Z

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

Case status

Mr X and his sons were detained on 21 February 2012 after arriving in Australia aboard Suspected Illegal Entry Vessel *Freestone* and have been held in detention for over four and a half years.

On 13 April 2016 the Minister lifted the bars under ss 46A and 48B to allow the family to lodge a temporary visa application. Mr X and his sons are awaiting an invitation to apply for a temporary visa.