

## 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 Ms X who has remained in immigration detention for more than 36 months (three years).

The first report 1002690 was tabled in Parliament on 24 February 2016. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1988
<b>Ombudsman ID</b>	1001501-O
<b>Date of DIBP's reports</b>	10 December 2015 and 6 June 2016
<b>Total days in detention</b>	1095 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1002690), Ms X remained at Wickham Point Alternative Place of Detention.	
25 March 2016	Transferred to Sydney Immigration Residential Housing.
1 April 2016	Transferred to community detention.

### Recent visa applications/case progression

10 December 2015	The Department of Immigration and Border Protection (DIBP) advised that Ms X's case was affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) <sup>1</sup> which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair.
17 March 2016	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to allow Ms X and her son to reside in community detention.
6 June 2016	DIBP advised that Ms X was in the process of obtaining a visa to enter and reside in Country B with her husband. <sup>2</sup>
27 July 2016	The Minister appealed the FFC decision and the High Court (HC) found that the ITOA process was not procedurally unfair. <sup>3</sup>  DIBP advised that it is considering the implications of this judgment.

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<sup>1</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

<sup>2</sup> Ms X's husband, Mr Y, is a citizen of Country B. He was involuntarily removed from Australia on 18 September 2014.

<sup>3</sup> *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

**Health and welfare**

International Health and Medical Services (IHMS) advised that Ms X continued to be monitored and treated for multiple mental health concerns including a history of torture and trauma and depression. She engaged with the mental health team as needed for support and counselling while in restricted detention. Following her transfer to community detention she has not presented with any mental health concerns.

IHMS further advised that Ms X attended physiotherapy to manage back pain after the birth of her son.

**Other matters**

6 June 2016	DIBP advised that Ms X's son, Master Z, has been recognised as a Country B citizen and holds a valid Country B passport. He is not subject to reporting under s 486N.
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**Case status**

Ms X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. Her case is affected by the HC judgment of 27 July 2016 and DIBP advised that it is considering the implications of this judgment.

DIBP further advised that Ms X is in process of obtaining a visa for herself and her son to enter and reside in Country B.