

**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 family who have remained in immigration detention for more than 54 months (four and a half years).

The first report 1001540 was tabled in Parliament on 1 October 2014 and the second report 1002006 was tabled in Parliament on 21 October 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Mr X (and family)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1981

**Family details**

<b>Family members</b>	Ms Y (wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1979

<b>Family members</b>	Miss Z (daughter)	Master P (son)	Miss Q (daughter)
<b>Citizenship</b>	Country A	Country A, born in Country B	Country A, born in Country B
<b>Year of birth</b>	2003	2008	2010

<b>Ombudsman ID</b>	1000969-O
<b>Date of DIBP's reports</b>	9 November 2015, 16 May 2016 and 6 November 2016
<b>Total days in detention</b>	1640 (at date of DIBP's latest report)

**Recent detention history**

Since the Ombudsman's previous report (1002006), Mr X and his family have remained in community detention.

**Recent visa applications/case progression**

1 June 2015	The Department of Immigration and Border Protection (the department) invited Mr X and family to comment on information relevant to their International Treaties Obligations Assessment (ITOA). Inadvertently this letter contained information about Ms Y's supplementary protection claims that she had requested not be disclosed to her husband.
12 June 2015	Ms Y advised the department that her privacy had been breached as Mr X had been made aware of her supplementary protection claims.

16 June 2015	Upon request the department reissued Ms Y the ITOA letter and advised that her ITOA would be conducted separately from Mr X's.
3 July 2015	The department referred the privacy breach matter to the Office of the Australian Information Commissioner (OAIC). On 8 July 2015 the OAIC advised that no action would be taken at this time.
9 November 2015	The department advised that Mr X and his family'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 ITOA process was procedurally unfair.
17 December 2015	The application for judicial review of the refusal of the family's Protection visa application by the Federal Circuit Court (FCC) was reinstated.
13 April 2016	The Minister lifted the bars under ss 46A and 48B of the <i>Migration Act 1958</i> to allow the family to lodge a temporary visa application.
27 July 2016	The Minister appealed the FFC decision and the High Court found that the ITOA process was not procedurally unfair. <sup>2</sup>  The department advised that it is considering the implications of this judgment.
29 July 2016	The Minister filed further submissions at the FCC in relation to the refusal of the family's Protection visa application. Judgment was reserved and the matter remains ongoing.
1 September 2016	Mr X and his family were notified that they were eligible to receive the Primary Application Information Service (PAIS) to assist them with lodging a temporary visa application. They accepted the offer on 2 November 2016.

#### Other legal matters

22 November 2014	Mr X was charged with criminal damage and being drunk and disorderly in a public place. On 21 September 2015 Mr X attended a Magistrates Court and his matters were dismissed.
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#### Health and welfare

*Mr X*

International Health and Medical Services (IHMS) advised that Mr X received treatment for ongoing headaches and vision impairment.
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<sup>1</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

<sup>2</sup> *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

Ms Y

IHMS advised that Ms Y reported relationship problems with her husband, relating to a history of torture, trauma and abuse. She reported considerable distress due to the breach of privacy relating to her protection claims. Ms Y continues to attend regular counselling and her symptoms of depression and anxiety are managed by her general practitioner (GP) and appropriate specialists as required.

IHMS further advised that Ms Y has received treatment for bilateral carpal tunnel syndrome and related ongoing chronic pain. She was referred for surgical review and underwent surgery in May 2016.

Miss Z

IHMS advised that Miss Z has received treatment for the management of stress, anxiety, depression and suicidal ideation. She has reported nightmares, stomach pain and headaches which her GP suggests are a result of ongoing stress and anxiety associated with the immigration status of her family.

IHMS further advised that Miss Z attended two medical consultations to investigate multiple blood conditions.

12 June 2015 –  
31 August 2015

Incident Reports recorded that Miss Z made allegations relating to her treatment by her parents. These allegations were reported to Child Protection Services and no further action was taken.

Master P and Miss Q

IHMS advised that Master P and Miss Q have not required treatment for any major physical or mental health issues.

### **Ombudsman assessment/recommendation**

Mr X and his family were detained on 11 May 2012 after arriving in Australia by sea and have been held in detention for more than four and a half years.

On 13 April 2016 the Minister lifted the bars under ss 46A and 48B to allow the family to apply for a temporary visa. On 2 November 2016 the family accepted the PAIS assistance and at the time of the department's latest report they were yet to be assigned a provider or invited to apply.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. The Ombudsman recommends that priority is given to exploring options to expedite the resolution of Mr X and his family's immigration status.