

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 Mr X and Ms Y who have remained in immigration detention for more than 42 months (three and a half years).

The first report 1001740 was tabled in Parliament on 27 May 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1978

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1986

Ombudsman ID	1003041
Date of DIBP's reports	16 July 2015 and 14 January 2016
Total days in detention	1276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001740), Mr X and Ms Y and their son¹ have remained in community detention.

Recent visa applications/case progression

24 March 2015	Federal Circuit Court dismissed judicial review.
23 April 2015	Requested judicial review by the Full Federal Court (FFC).
26 June 2015	Case was adjourned with no hearing date scheduled.
17 August 2015	The Department of Immigration and Border Protection (DIBP) notified Mr X and Ms Y 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. On 27 August 2015 Mr X and Ms Y provided a response.
5 November 2015	FFC dismissed judicial review.

¹ Master Z was born in Australia in April 2014 and has been in detention for less than two years. He is not subject to reporting under s 486N.

7 December 2015	Mr X and Ms Y lodged an application with the High Court (HC) for special leave to appeal the FFC's decision in relation to their negative Protection visa application.
14 January 2016	DIBP advised that Mr X and Ms Y's case is affected by the judgment handed down on 2 September 2015 by the FFC ² which found that the ITOA process was procedurally unfair.
21 March 2016	The Minister filed a notice in the HC to appeal the FFC's decision.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that a general practitioner (GP) continued to monitor Mr X for previously reported conditions including chronic lower back pain and a growth to his inner lip. He has attended specialist appointments for assessment and treatment for his back condition and is waiting to see a plastic surgeon concerning the lip growth.

Since the Ombudsman's previous report, in August 2015 Mr X was identified to have a blockage in his heart. His condition is monitored by a general practitioner and he is awaiting a cardiology review.

IHMS reported that Mr X has not required treatment for any major mental health issues.

Ms Y

DIBP did not provide an IHMS Health Summary Report for Ms Y for the 31 December 2014 to 9 July 2015.

In the latest IHMS report, dated 15 December 2015, IHMS reported that Ms Y continued to be monitored for ongoing hearing difficulties and a history of Bell's Palsy. She was referred to an audiologist on 29 May 2015.

Ms Y also continued to be monitored for depression and anxiety. IHMS advised that her mental health deteriorated after significant life events in May and September 2015. She was diagnosed with schizophrenia (date unknown) and was monitored and treated by a GP and specialist counselling service.

Case status

Mr X and Ms Y have been found not to be owed protection under the Refugee Convention and the complementary protection criterion. They are awaiting the outcome of judicial review.

Mr X and Ms Y'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 FFC's decision.

² *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.