

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 first report 1579/13 was tabled in Parliament on 4 December 2013, the second report 1001414 was tabled in Parliament on 25 June 2014, the third report 1001701 was tabled in Parliament on 18 March 2015 and the fourth report 1002181 was tabled in Parliament on 2 March 2016. 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	1986
Total days in detention	2004 (at date of DIBP's latest report)

Family details

Family members	Ms Y (wife)	Master Z (son)	Master P ¹ (son)
Citizenship	Country A	Country A, born in Australia	Country A, born in Australia
Year of birth	1989	2011	2014
Total days in detention	2004 (at date of DIBP's latest report)	1693 (at date of DIBP's latest report)	783 (at date of DIBP's latest report)

Ombudsman ID	1000766-O
Date of DIBP's reports	6 January 2016 and 6 July 2016

Recent detention history

Since the Ombudsman's previous report (1002181), Mr X and his family² have remained in community detention.

Mr X was approved to stay at a separate community detention address on 8 February 2016 following an incident of domestic violence. On 7 April 2016 Mr X and Ms Y reconciled their relationship and Mr X returned to the family's residence.

¹ Master P was born in Australia on 26 February 2014 and was subject to an individual report under s 486N. He was previously reported on in Ombudsman report 1002403-O and is now included in his family's report.

² Mr X and Ms Y's third child Master Q was born in Australia in October 2015 and detained on 6 January 2016. He has been in detention for less than two years and is not subject to reporting under s 486N.

Recent visa applications/case progression

6 January 2016	The Department of Immigration and Border Protection (DIBP) 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) ³ which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair.
13 April 2016	The Minister lifted the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X and Ms Y to lodge a temporary visa application.
21 April 2016	DIBP invited Mr X and Ms Y to apply for a temporary visa.
27 May 2016	The Minister lifted the bar under s 46A to allow Master P and Master Q to lodge a temporary visa application. Master Z remains subject to the bar.
14 June 2016	Ms Y was notified that she is eligible to receive the Primary Application Information Service to assist her with lodging a temporary visa application.
6 July 2016	DIBP advised that options for aligning the family's immigration pathways are under consideration.
27 July 2016	The Minister appealed the FFC decision and the High Court found that the ITOA process was not procedurally unfair. ⁴

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X presented with symptoms of depression, anxiety and sleep disturbance related to marital concerns. He was provided with supportive counselling and was referred to a psychologist for further assessment.

Ms Y

IHMS advised that Ms Y received psychological counselling for the management of depression, anxiety and stress. The psychologist advised that Ms Y's housing situation negatively impacts her mental health due to the unhygienic and over-crowded conditions, and advised that an alternative placement be considered.

October 2015 Ms Y gave birth to her son without complication.

Master Z

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

Master P

IHMS advised that Master P has been referred for a surgical procedure for a medical condition, with an appointment yet to be confirmed.

³ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

⁴ *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

Ombudsman assessment/recommendation

Mr X and Ms Y were detained on 10 January 2011 after arriving in Australia aboard Suspected Illegal Entry Vessel *Oakes* and have been held in detention for over five and a half years.

On 13 April 2016 the Minister lifted the bar under s 46A to allow Mr X and Ms Y to apply for a temporary visa and on 21 April 2016 DIBP invited them to apply.

On 27 May 2016 the Minister lifted the bar under s 46A to allow Mr X and Ms Y's youngest children, Master P and Master Q to lodge a temporary visa application. Master P and Master Q are awaiting an invitation to apply for a temporary visa.

The Ombudsman notes that Mr X and Ms Y's first child Master Z remains subject to the bar. The Ombudsman recommends that the Minister lift the bar under s 46A and processing of Master Z's protection claims commence as soon as possible. The Ombudsman further notes DIBP's advice that options for aligning the family's immigration pathways are under consideration.

The Ombudsman notes advice from IHMS that the family's current housing situation is negatively impacting on Ms Y's mental health and recommends that DIBP consider an alternative community detention placement for the family.