

**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 Mr Y who have remained in immigration detention for more than 36 months (three years).

The first report 1003190 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>	Mr X (and son)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1952

**Family details**

<b>Family members</b>	Mr Y (son)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1991

<b>Ombudsman ID</b>	1001946-O
<b>Date of DIBP's reports</b>	4 February 2016 and 4 August 2016
<b>Total days in detention</b>	1094 (at date of DIBP's latest report)

**Recent detention history**

Since the Ombudsman's previous report (1003190), Mr X and Mr Y remained at Wickham Point Alternative Place of Detention.	
4 May 2016	Transferred to Melbourne Immigration Transit Accommodation.

**Recent visa applications/case progression**

4 February 2016	The Department of Immigration and Border Protection (DIBP) advised that Mr X and Mr Y's case is affected by the judgment handed down on 2 September 2015 <sup>1</sup> by the Full Federal Court (FFC) which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair.  The Federal Circuit Court adjourned the review of Mr X and Mr Y's ITOA pending the outcome of any appeal against the FFC's decision.
27 July 2016	The Minister appealed the FFC decision and the High Court (HC) found that the ITOA process was not procedurally unfair. <sup>2</sup>  DIBP advised that it is considering the implications of this judgment.

<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.

## **Health and welfare**

*Mr X*

International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple physical health concerns, including type 2 diabetes and hepatitis B. He continues to be monitored by the IHMS medical team as per his treatment plan.

*Mr Y*

IHMS advised that Mr Y received treatment for multiple physical health concerns, including chronic back pain and hepatitis B. He was referred to a hospital liver clinic for review and continues to be monitored by the IHMS general practitioner.

## **Case status**

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