

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

The first report 1001458 was tabled in Parliament on 18 June 2014 and the second report 1001816 was tabled in Parliament on 17 June 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X (and son)
Citizenship	Country A
Year of birth	1981

Family details

Family members	Master Y (son)
Citizenship	Country A
Year of birth	2004

Ombudsman ID	1003271
Date of DIBP's reports	19 August 2015, 16 February 2016 and 16 August 2016
Total days in detention	1640 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001816), Mr X and his son have remained in community detention.

Recent visa applications/case progression

12 May 2015	The Department of Immigration and Border Protection (DIBP) finalised an International Treaties Obligations Assessment (ITOA), determining that Mr X and his son's case did not engage Australia's <i>non-refoulement</i> obligations.
3 July 2015	Requested judicial review of the ITOA by the Federal Circuit Court (FCC).
11 November 2015	Mr X's directions hearing before the FCC was adjourned and scheduled for hearing on 2 December 2016.
16 February 2016	DIBP advised that Mr X's case was affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ¹ which found that the ITOA process was procedurally unfair.

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

13 April 2016	The Minister lifted the bars under ss 46A and 46B to allow Mr X and his son to lodge a temporary visa application.
27 July 2016	The Minister appealed the FFC decision and the High Court (HC) found that the ITOA process was not procedurally unfair. ² DIBP advised that it is considering the implications of this judgment.
16 August 2016	DIBP advised that Mr X and his son have not yet been invited to lodge an application for a temporary visa. DIBP further advised that Mr X is no longer a person of interest in relation to alleged people smuggling activities.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X continued to be managed by a general practitioner for anxiety, depression and insomnia.

DIBP did not provide an IHMS Health Summary Report for Mr X for the period 20 January 2016 to 12 July 2016.

Master Y

IHMS advised that Master Y received treatment for a fractured arm on 20 May 2015, however he has not required treatment for any significant physical or mental health issues since this date.

Case status

Mr X and his son were detained on 19 February 2012 after arriving in Australia aboard Suspected Illegal Entry Vessel *Allman* and have been held in detention for over four and a half years. At the time of DIBP's latest review Mr X and his son were awaiting the outcome of judicial review.

On 12 April 2016 the Minister lifted the bars under ss 46A and 46B to allow Mr X and his son to lodge a temporary visa application. Mr X and his son are awaiting an invitation to apply for a temporary visa.

Mr X and his son's case is also affected by the HC judgment of 27 July 2016 and DIBP advised that it is considering the implications of this judgment.

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