

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the fourth s 486O report on Ms X and her children who remained in immigration detention for a cumulative period of more than 60 months (five years).

The first report 1001385 was tabled in Parliament on 18 June 2014, the second report 1001638 was tabled in Parliament on 13 May 2015 and the third report 1002812 was tabled in Parliament on 31 August 2016. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Ms X (and children)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1984
<b>Total days in detention</b>	1822 (at date of DIBP's latest report)

### Family details

<b>Family members</b>	Miss Y (daughter)	Master Z (son)	Master P (son)
<b>Citizenship</b>	Country A	Country A	Country A, born in Australia
<b>Date of birth</b>	2004	2006	2014
<b>Total days in detention</b>	1822 (at date of DIBP's latest report)		937 (at date of DIBP's latest report)

<b>Ombudsman ID</b>	1000924-O
<b>Date of DIBP's reports</b>	5 July 2016 and 14 December 2016

### Recent detention history

Since the Ombudsman's previous report (1002812), Ms X and her family <sup>1</sup> remained in community detention.	
8 February 2017	Granted Bridging visas and released from detention.

### Recent visa applications/case progression

13 April 2016	The Minister lifted the bars under ss 46A and 48B of the <i>Migration Act 1958</i> to allow Ms X, Miss Y and Master Z to apply for a temporary visa.
21 April 2016	Ms X, Miss Y and Master Z were invited to lodge a temporary visa application.
27 May 2016	The Minister lifted the bar under s 46A to allow Master P to apply for a temporary visa.

<sup>1</sup> Ms X's husband, Mr Q resided with the family in community detention. He is the subject of Ombudsman report 1002089-O.

30 May 2016	Ms X, Miss Y and Master Z were notified that they were eligible to receive the Primary Application Information Service (PAIS) to assist them with lodging a temporary visa application.  Ms X accepted the offer on 3 August 2016 and they were assigned a provider.
5 July 2016	The Department of Immigration and Border Protection (the department) advised that Ms X and her children's case was affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) <sup>2</sup> which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair.
27 July 2016	The Minister appealed the FFC decision and the High Court found that the ITOA process was not procedurally unfair. <sup>3</sup>  The department advised it is considering the implications of this judgment.
31 August 2016	Found to meet the guidelines for referral to the Minister under s 195A.
28 October 2016	Referred on a ministerial submission for consideration under ss 195A and 46A(2) for the grant of a Bridging visa and to allow the family to lodge further Bridging visa applications without ministerial intervention.
12 December 2016	The Minister agreed to consider Ms X and her children's case on a second submission under ss 195A and 46A(2).
8 February 2017	Granted Bridging visas.

## Health and welfare

### Ms X

International Health and Medical Services (IHMS) advised that Ms X continued to manage her thyroid condition with medication and was regularly monitored by a general practitioner. In February 2016 she was referred to an ear, nose and throat specialist for a hearing assessment and continued to await an appointment at the time of reporting. She was also treated for an infection in June 2016 with antibiotics until the infection cleared. An examination in October 2016 found no abnormalities.

### Miss Y, Master Z and Master P

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

## Other matters

14 December 2016	The department advised that Ms X and her family resided in community detention with Ms R who claims to be Ms X's mother. The department further advised that uncertainty had arisen about the relationship and further verification was ongoing.  Ms R arrived in Australia by sea with the family and is the subject of Ombudsman report 1000923-O.
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<sup>2</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

<sup>3</sup> *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

**Case status**

Ms X and her children were detained on 19 December 2011 after arriving in Australia by sea and were held in detention for over five years.

On 13 April 2016 and 27 May 2016 the Minister lifted the bars under ss 46A and 48B to allow Ms X and her children to apply for a temporary visa. On 3 August 2016 Ms X accepted the PAIS assistance and they were assigned a provider to assist with lodging an application.

Ms X and her children were granted Bridging visas on 8 February 2017 and were released from detention.