

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 Mr X and his family who have remained in immigration detention for more than 54 months (four and a half years).

The first report 1608/13 was tabled in Parliament on 4 December 2013, the second report 1001303 was tabled in Parliament on 1 October 2014 and the third report 1001993 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 family)
Citizenship	Country A
Year of birth	1980
Total days in detention	1,640 (at date of DIBP's latest report)

Family details

Family members	Ms Y (wife)	Miss Z (daughter)	Miss Q (daughter)
Citizenship	Country A	Country A	Country A, born in Australia
Year of birth	1980	2009	2012
Total days in detention	1,640 (at date of DIBP's latest report)		1,156 (at date of DIBP's latest report)

Ombudsman ID	1002495
Date of DIBP's reports	15 May 2015 and 5 November 2015

Recent detention history

Since the Ombudsman's previous report (1001993), Mr X and his family have remained in community detention.

Recent visa applications/case progression

14 January 2015	Mr X and his family were issued with a letter notifying them 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. They were also invited to provide further information to support the ITOA. DIBP advised that no response was received.
17 February 2015	DIBP advised that a letter was issued to Mr X and his family requesting further information for the ITOA.
18 March 2015	Mr X and his family provided a response in relation to the ITOA.
15 May 2015	DIBP advised that following legislative amendment, Miss Q is only eligible for a temporary visa. DIBP further advised that it is considering options to resolve her situation and the finding by the Refugee Review Tribunal (RRT) that she is owed protection.

5 November 2015	DIBP advised that the family's case is 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. DIBP further advised that it is reviewing how this judgment will affect protection obligations processes.
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Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X has not required treatment for any major physical or mental health issues since its previous report to the Ombudsman.
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Ms Y

IHMS advised that Ms Y continued to be monitored by her general practitioner (GP) for hepatitis B.	
8 January 2015 – ongoing	Presented to her GP with allergy symptoms. She was referred to an immunologist after anti-allergy medication had not controlled the symptoms. IHMS advised that no appointment date had been provided. Ms Y also reported symptoms of depression to her GP. She was provided with support and referred for counselling. On 14 January 2015 she advised that she was feeling better. She continues to be managed by her GP.
14 January 2015 – ongoing	She reported experiencing abdominal pain after meals. She was prescribed medication and monitored by her GP.
5 August 2015	Ms Y presented to her GP with migraine symptoms. A magnetic resonance imaging scan identified no abnormalities and she was prescribed with medication.

Miss Z

14 January 2014 – ongoing	Referred to a specialist following a history of sinusitis, itchy eyes and a skin rash. She was prescribed with medication until an appointment date is confirmed.
June 2015	Miss Z presented to the GP with her father who advised that she had an adenoid condition which was impacting on her breathing while she slept. IHMS advised that she had seen an ear, nose and throat specialist and was awaiting a date for surgery.

Miss Q

27 November 2012 – ongoing	Prescribed with a topical cream following a skin condition. Miss Q is monitored by her GP.
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¹ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Case status

Mr X, Ms Y and Miss Z arrived in Australia on 10 May 2011 and have been detained for over four and a half years. Mr X, Ms Y and Miss Z have been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

Mr X and Ms Y's youngest daughter, Miss Q, was found to be owed protection by the RRT in April 2014.

In January 2015 Mr X, Ms Y and Miss Z's protection claims were being reassessed under an ITOA.

Mr X, Ms Y and Miss Z's case is affected by the FFC judgment of 2 September 2015 which found that the ITOA process was procedurally unfair. DIBP has advised that it is reviewing how this judgment will affect protection obligations processes.