

## 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 Miss X and her sister who have remained in immigration detention for more than 30 months (two and a half years).

The first report 1002381<sup>1</sup> was tabled in Parliament on 25 November 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Miss X (and sister)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1999

### Family members

<b>Name</b>	Miss Y (sister)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	2001

<b>Ombudsman ID</b>	1003451
<b>Date of DIBP's report</b>	24 September 2015
<b>Total days in detention</b>	912 (at date of DIBP's report)

### Detention history

26 March 2013	Miss X and Miss Y were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland as unaccompanied minors aged 13 and 12 aboard Suspected Illegal Entry Vessel (SIEV) 619 <i>Triumph</i> , indicating that they arrived as 'direct entry persons'. <sup>2</sup>  They were transferred to Darwin Airport Lodge Alternative Place of Detention.
1 April 2013	Transferred to Brisbane Immigration Transit Accommodation.
17 April 2013	Transferred to community detention.

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<sup>1</sup> Miss X and her sister were previously reported on in a group of unaccompanied minors' report who arrived on SIEV 619 *Triumph*.

<sup>2</sup> A maritime arrival to Australia's mainland who is seeking protection. Maritime arrivals who arrived as 'direct entry persons' after 13 August 2012 and before 20 May 2013 are not subject to the s 46A bar.

## Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Miss X and Miss Y were part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A.	
30 June 2015	The Minister lifted the bar under s 46A to allow Miss X and Miss Y to lodge a temporary visa application.
10 July 2015	Miss X and Miss Y were notified that they were eligible for the Primary Application Information Service to assist them with lodging a temporary visa application. They accepted the offer on 31 July 2015.
24 September 2015	DIBP advised that Miss X and Miss Y will not be considered for Bridging visas while they remain minors.

## Health and welfare

### Miss X

31 July 2015	International Health and Medical Services (IHMS) reported that Miss X presented to a hospital emergency department with abdominal pain. She was diagnosed with a urinary tract infection and discharged with a prescription for antibiotic medication. She attended follow-up appointments with a general practitioner and no further concerns were reported.
9 September 2015	IHMS advised that Miss X has not required treatment for any mental health concerns since its previous report to the Ombudsman.

### Miss Y

IHMS advised that Miss Y has not required treatment for any major physical or mental health concerns since its previous report to the Ombudsman.
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## Other matters

28 July 2015	<p>The Ombudsman's office requested information from DIBP about the circumstances of the arrival of a number of people from SIEV 662 <i>Lambeth</i> who were detained on the Australian mainland, apparently as 'direct entry persons', but have been subject to the bar under s 46A.</p> <p>The Ombudsman's office also identified that there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p>
30 July 2015 – 25 August 2015	DIBP advised on four occasions that it expected to provide clarification as soon as information had been sourced from other areas within DIBP.

1 September 2015	<p>The Ombudsman's office opened an investigation into the arrival and detention circumstances of people who arrived in Australian waters on 17 April 2013 aboard SIEV <i>Lambeth</i>.</p> <p>The Ombudsman's office also identified that there may be more arrivals, including Miss X and Miss Y who arrived on SIEV <i>Triumph</i>, who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p> <p>A response from DIBP was requested by 30 September 2015 but not received.</p>
2 October 2015 – 22 October 2015	DIBP advised on three occasions that its response was awaiting clearance and would be delayed.
13 November 2015	The Ombudsman's office requested further information under its own motion powers into the arrival and detention circumstances of people who arrived in Australian waters between 13 August 2012 and 20 May 2013 who appeared to have been detained on the Australian mainland as 'direct entry persons' but remained subject to the s 46A bar.
26 November 2015	The matter was raised at a meeting with senior DIBP staff and it was requested that a response to the investigation into the people who arrived on SIEV <i>Lambeth</i> be provided to the Ombudsman's office by 10 December 2015.
16 December 2015	DIBP provided a response to the Ombudsman's request for information.
23 December 2015	<p>The Ombudsman notified the Minister for Immigration and Border Protection of his intention to conduct an investigation under his own motion powers into DIBP's administration of the detention of people who arrived in Australian waters on SIEV <i>Lambeth</i>.</p> <p>The Ombudsman further advised the Minister that he would ask DIBP to look further at other boats where the arrivals were detained in Darwin around the same period of time.</p>
25 February 2016	DIBP advised that an internal investigation had commenced to examine the issues raised by the Ombudsman's own motion investigation and that it will keep the Ombudsman advised as this progresses.

### **Ombudsman assessment/recommendation**

Miss X and Miss Y were detained on 26 March 2013 after arriving in Australia as unaccompanied minors aged 13 and 12 aboard SIEV *Triumph* and have been held in detention for over two and a half years with no processing of their protection claims.

The Ombudsman notes that DIBP considered that Miss X and Miss Y were subject to the bar under s 46A for more than two years until the Minister lifted the bar on 30 June 2015 to allow Miss X and Miss Y to apply for a temporary visa.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Miss X and Miss Y may not have been subject to the s 46A bar due to their arrival on the Australian mainland as 'direct entry persons' on 26 March 2013.

The Ombudsman notes that DIBP has commenced an internal investigation into the issues raised by the Ombudsman's own motion investigation and that it will keep the Ombudsman advised as this progresses. The Ombudsman recommends that priority is given to resolving the circumstances of Miss X and Miss Y's method of arrival, the provision of the *Migration Act 1958* under which they were detained, and whether they should have been subject to the s 46A bar.