

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Ms X who remained in restricted immigration detention for more than 24 months (two years).

Name	Ms X
Citizenship	Country A
Year of birth	1976
Ombudsman ID	1003079
Date of DIBP's report	21 April 2015
Total days in detention	Not provided

Detention history

14 April 2013	Ms X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 648 <i>Weinem</i> , indicating that she may have arrived as a 'direct entry person'. ¹
14 August 2015	Granted a Bridging visa with an associated Temporary Humanitarian Stay (THS) visa and released from detention.
The Department of Immigration and Border Protection (DIBP) advised that Ms X's husband, Mr Y, arrived in Australia aboard SIEV <i>Studebaker</i> . He is the subject of Ombudsman report 1003035.	

Visa applications/case progression

DIBP advised that prior to being released from detention, Ms X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister had not lifted the bar under s 46A.	
14 August 2015	Granted a Bridging visa with an associated THS visa.
25 September 2015	Ms X's case was referred on a ministerial submission for consideration under s 46A to lift the bar.
29 September 2015	The Minister lifted the bar under s 46A to allow Ms X to lodge a temporary visa application.

Health and welfare

16 April 2013	International Health and Medical Services (IHMS) advised that a previous hepatitis B infection was identified during routine pathology testing.
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¹ 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.

11 May 2013	Diagnosed with latent tuberculosis and referred to a specialist clinic for treatment. She was prescribed with preventative medication and attended monthly liver function tests. IHMS advised that her treatment was concluded in March 2014 and she was monitored as per state policy.
June 2013	Ms X threatened to commence food and fluid refusal if she was not reunited with her husband, who had been transferred to another detention facility.
29 June 2013	Ms X was placed on Supportive Monitoring and Engagement (SME) observations and attended regular supportive counselling. IHMS advised that the SME observations were ceased on 11 July 2013 following improvements in her mental health.
4 April 2014	A DIBP Incident Report recorded that Ms X threatened self-harm following an argument with two detainees.
25 August 2014	A DIBP Incident Report recorded that Ms X refused food and fluid as a form of protest.
December 2014	During a mental health assessment, Ms X presented with symptoms of situational stress related to her ongoing detention. She was advised to self-refer to the mental health team as required.

Detention incidents

4 November 2014	A DIBP Incident Report recorded that the police were contacted after Ms X alleged that a Serco officer had sexually harassed her. No further information was provided.
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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 Ms X who arrived on SIEV <i>Weinem</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.
20 April 2016	DIBP provided its response to the Ombudsman's investigation.

Ombudsman assessment

Ms X was granted a Bridging visa with an associated THS visa on 14 August 2015 and released from immigration detention.

Ms X was detained on 14 April 2013 after arriving in Australia aboard SIEV *Weinem* and was held in restricted detention for over two years before being granted a Bridging visa.

The Ombudsman notes that DIBP considered that Ms X was subject to the bar under s 46A for more than two years until the Minister lifted the bar on 29 September 2015 to allow Ms X 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 Ms X may not have been subject to the s 46A bar due to her arrival and detention on the Australian mainland as an apparent 'direct entry person' on 14 April 2013.

The Ombudsman notes that DIBP has commenced an internal investigation into the issues raised by the Ombudsman's own motion investigation and provided its response to some of the issues on 20 April 2016. The Ombudsman is considering DIBP's response and makes no recommendations in this report.