

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 immigration detention for more than 24 months (two years).

Name	Ms X
Citizenship	Country A
Year of birth	1992
Ombudsman ID	1003089
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
18 June 2015	Granted a Bridging visa and released from community detention.

Visa applications/case progression

The Department of Immigration and Border Protection (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.	
18 June 2015	Granted a Bridging visa.
1 December 2015	The Minister lifted the bar under s 46A to allow Ms X to lodge a temporary visa application.

Health and welfare

April 2013	International Health and Medical Services (IHMS) advised that Ms X disclosed a history of depression and self-harm.
July 2013	Ms X was placed on Supportive Monitoring and Engagement observations (dates not provided) following a deterioration in her mental health related to her immigration pathway.
6 July 2013 – 12 July 2013	Ms X refused food and fluid as a form of protest. She was closely monitored by the mental health team.
16 September 2013	Ms X's pregnancy was confirmed and she was referred for antenatal care. Her estimated delivery date was in May 2014.

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.

December 2013	IHMS advised that Ms X attended regular supportive counselling and reported that her mental health had improved.
31 December 2013	Transferred to a hospital emergency department after reporting abdominal pain. All tests returned normal results and she was discharged with advice to take pain relief medication as required.
10 January 2014	Transferred to a hospital emergency department after collapsing with abdominal pain. IHMS advised that all tests returned normal results.
May 2014	Ms X gave birth to her son ² without complication.
10 February 2015 and 2 March 2015	Referred for a computed tomography (CT) scan after presenting to a general practitioner with recurring headaches.
4 March 2015	The CT scan identified no abnormalities and she was advised to take pain relief medication as required.

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.

² Ms X's son (name not provided) was born in Australia in May 2014 and has been in detention for less than two years. He is not required to be reported on under s 486N.

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	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> . 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.
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 on 18 June 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 detention for more than 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 1 December 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.