

# 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 Ms X and her daughters who remained in immigration detention for more than 42 months (three and a half years).

The first report 1001864<sup>1</sup> was tabled in Parliament on 18 March 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Ms X (and daughters)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1957

## Family details

<b>Family members</b>	Ms Y (daughter)	Ms Z (daughter)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1993	1998

<b>Ombudsman ID</b>	1002304
<b>Date of DIBP's reports</b>	23 March 2015, 8 September 2015 and 8 March 2016
<b>Total days in detention</b>	1,276 (at date of DIBP's latest report)

## Detention history

9 September 2012	Ms X and her daughters were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 440 <i>Uvaursi</i> , indicating that they may have arrived as 'direct entry persons'. <sup>2</sup> The family was transferred to Darwin Airport Lodge Alternative Place of Detention.
12 December 2012	Transferred to community detention.
19 April 2016	Granted Bridging visas and released from detention.

## Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Ms X and her daughters 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.	
26 May 2015	The Minister lifted the bar under s 46A to allow the family to lodge a temporary visa application.

<sup>1</sup> Ms X and her daughters were previously reported on in a group report of people who arrived on SIEV 440 *Uvaursi*.

<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.

1 June 2015	Ms X was notified that she is eligible to receive the Primary Application Information Service (PAIS) to assist her with lodging a temporary visa application.
16 June 2015	Ms X accepted the PAIS offer.
15 July 2015	DIBP invited Ms Y and Ms Z to lodge a temporary visa application.
8 September 2015	DIBP advised that it had assigned Ms X a PAIS provider to assist her with lodging a temporary visa application.
10 September 2015	Ms X and her daughters lodged a Safe Haven Enterprise visa (SHEV) application which triggered an associated Bridging visa application.
3 November 2015	DIBP notified Ms X and her daughters that the associated Bridging visa application was invalid.
20 January 2016	DIBP received allegations that Ms Y was breaching her community detention conditions by working illegally in the community. DIBP advised that Ms Y confirmed the allegations on 29 January 2016
2 March 2016	Ms Y's case was referred on a ministerial submission for consideration under ss 197AD and 195A to revoke her community detention placement or to grant a Bridging visa.
19 April 2016	Granted Bridging visas.

## Health and welfare

### Ms X

15 November 2012	International Health and Medical Services (IHMS) advised that Ms X was reviewed by a psychiatrist and diagnosed with an anxiety disorder with depressive symptoms, insomnia and situational stress. She was prescribed with antidepressant medication and referred for counselling.
December 2012 – 19 April 2016	Following her transfer to community detention, Ms X was placed on a mental health care plan and closely monitored by a general practitioner (GP), psychiatrist and psychologist.
21 December 2012 – 30 August 2013	DIBP Incident Reports recorded that Ms X was admitted to hospital for psychiatric treatment on six occasions following mental health concerns and repeated threats of self-harm.
7 March 2013 – ongoing	Ms X was diagnosed with type 2 diabetes and placed on a chronic disease management plan.
14 March 2013	Reviewed by a psychiatrist and diagnosed with an adjustment and personality disorder. The psychiatrist noted that her symptoms were related to situational stressors, including Ms Z's medical condition.
12 April 2013 – 19 April 2016	Presented to her GP with recurring shoulder pain and was diagnosed with muscle abnormalities. She was prescribed with pain relief medication and referred to an orthopaedic specialist. IHMS advised that an appointment was outstanding at the time of its latest report.

2 August 2013 – 3 August 2013	A DIBP Incident Report recorded that Ms X was admitted to a hospital emergency department following an intentional medication overdose. No further information was provided.
October 2014	Presented to the GP with ongoing back pain. A computed tomography (CT) scan identified spinal abnormalities. IHMS advised that she attended regular physiotherapy and hydrotherapy sessions for pain management.
18 October 2014	Ms X was referred for further psychological counselling and cognitive behavioural therapy following a deterioration in her mental health.
29 October 2014	Presented with complications related to a medical condition. An ultrasound identified abnormalities and she was referred to a specialist.
August 2015	Attended a specialist review and no abnormalities were identified. IHMS advised that no further concerns were raised.
3 August 2015	Ms X reported that her antidepressant medication was effective and her condition had improved.
18 August 2015	Diagnosed with an abnormal liver function and referred to a hepatologist. An appointment was outstanding.
25 August 2015	An abdominal ultrasound identified a fatty liver.
18 September 2015	A spinal CT scan identified a multiple level degenerative disc disease. She was prescribed further pain relief medication.
18 December 2015	Ms X reported she had ceased taking her diabetic medication because of the unwanted side effects.
6 January 2016 and 26 January 2016	She was prescribed with antidiabetic medication and monitored by a GP under a chronic disease management plan.
1 February 2016	IHMS advised that Ms X did not present with any significant mental health concerns during this reporting period.

#### Ms Y

17 December 2012 – 19 April 2016	Ms Y requested psychological counselling during a consultation with a GP. IHMS advised that she attended an appointment with a psychologist on 24 January 2013 and regularly attended specialist counselling (dates not provided).
18 February 2013	Ms Y presented with abdominal pain and was prescribed with pain relief medication. An ultrasound identified no abnormalities and she was referred to a gastroenterology clinic. IHMS advised that it had no indication that she attended the appointment.
23 April 2013 and 29 July 2014	Ms Y presented with recurring abdominal pain and was prescribed with further medication.
5 June 2013	Diagnosed with a skin condition and referred to a dermatologist. IHMS could not confirm whether she attended the referral.
29 July 2014	Presented with symptoms related to her skin condition and was provided with a second referral to a dermatologist.

7 October 2014	During an appointment with the GP, Ms Y presented with low mood related to her family situation. She was referred for further psychological counselling, however IHMS could not confirm her attendance.
29 January 2016	IHMS advised that Ms Y did not present with any significant physical or mental health concerns during this reporting period.

#### Ms Z

September 2012 – ongoing	<p>During her induction medical assessment, Ms Z presented with cerebral palsy. IHMS reported that she experiences limited limb mobility and requires a wheelchair and assistance in most aspects of daily life.</p> <p>IHMS advised that Ms Z was regularly monitored by a multidisciplinary team, including an occupational therapist and paediatric rehabilitation specialist. She attended regular physiotherapy and hydrotherapy sessions to improve her independence and mobility.</p>
October 2012	Ms Z was reviewed by a paediatrician, occupational therapist, physiotherapist, speech pathologist and podiatrist. She was provided with a walking frame, appropriate footwear and hand splints.
December 2012	Following her transfer to community detention, Ms Z's residence was assessed by an occupational therapist and recommendations were made.
14 January 2013	The speech pathologist reported that Ms Z can understand and speak Language B and basic English. It was recommended that she attend further language classes.
29 January 2013	Ms Z presented to a GP with abdominal pain. She was provided with education and prescribed with medication.
24 September 2013 – 26 September 2013	IHMS advised that she was admitted to hospital following recurring abdominal pain. She was diagnosed with a digestive condition and it was noted that she had been non-compliant with her medication.
July 2014	A DIBP Incident Report recorded that Ms Z injured herself while trialling a powered wheelchair. She was taken to hospital by ambulance for treatment. IHMS advised that Ms Z required further lessons in using the wheelchair before she could operate it independently.
October 2014	<p>Following two previous trials, an occupational therapist recommended that Ms Z receive a powered wheelchair to improve her independence. IHMS advised that the request was approved.</p> <p>A second assessment reviewed Ms Z's use of a posterior walker and recommendations were made.</p>
5 November 2014	Ms Z was referred for psychological counselling after she presented with low mood related to her cerebral palsy and social circumstances.

16 February 2015	<p>Ms X and Ms Z attended a routine paediatric assessment to review Ms Z's level of physiotherapy and exercise. IHMS advised that a dispute occurred between Ms Z and her mother regarding her exercise plan.</p> <p>Ms Z was provided with new orthotics and encouraged to continue exercising at home with assistance from her carer. She was referred to a specialist adolescent care service to assist her transition into adult services.</p>
May 2015	She was provided with a powered wheelchair.
15 May 2015	Ms Z attended a physical medicine and rehabilitation appointment. IHMS advised that the report was not received.
19 January 2016	The GP requested additional carer hours for Ms Z and provided documentation to DIBP for approval.
6 January 2016	Ms Z was referred to a dermatology specialist after raising concerns about a skin tag on her nose. IHMS advised that the referral was declined as it was for a private specialist and the GP was requested to provide a public referral.
29 January 2016	IHMS advised that Ms Z did not require treatment for any significant mental health concerns during this reporting period and that it was awaiting an updated referral to a dermatology specialist and the outcome of DIBP's consideration of the additional carer hours request.

#### **Detention incidents**

4 July 2013	A DIBP Incident Report recorded that Ms X advised that she was unable to care for Ms Z and requested additional carer assistance.
1 April 2014	A DIBP Incident Report recorded that Ms Z's counsellor reported that Ms X had allegedly slapped Ms Z across the face. DIBP advised that the family case worker issued a welfare notification.
26 May 2015	A DIBP Incident Report recorded that Ms Z's counsellor reported an assault incident to the family's case worker.
23 June 2015	A DIBP Incident Report recorded that a welfare notification was issued after Ms Z alleged that she had been hit on the head by her sister.
4 January 2016	A DIBP Incident Report recorded that a welfare notification was issued after Ms X was observed bathing Ms Z in a rough manner which made Ms Z cry.

## 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 and her daughters who arrived on SIEV <i>Uvaursi</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 and her daughters were granted Bridging visas on 19 April 2016 and released from immigration detention.

Ms X and her daughters were detained on 9 September 2012 after arriving in Australia aboard SIEV *Uvaursi* and were held in detention for over three and a half years before being granted Bridging visas.

The Ombudsman notes that DIBP considered that Ms X and her daughters were subject to the bar under s 46A for over three years until the Minister lifted the bar on 26 May 2015 to allow the family to apply for a temporary visa. On 10 September 2015 Ms X and her daughters lodged a SHEV application.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Ms X and her daughters may not have been subject to the s 46A bar due to their arrival and detention on the Australian mainland as apparent 'direct entry persons' on 9 September 2012.

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.