

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 Mr X and his sisters who have remained in immigration detention for more than 36 months (three years).

The first report 1002963 was tabled in Parliament on 3 February 2016. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and sisters)
Citizenship	Country A
Year of birth	1996

Family details

Family members	Ms Y (sister)	Miss Z (sister)
Citizenship	Country A	Country A
Year of birth	1998	2000

Ombudsman ID	1003528
Date of DIBP's reports	21 October 2015 and 20 April 2016
Total days in detention	1094 (at date of DIBP's latest report)

Detention history

22 April 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland as unaccompanied minors aged 16, 14 and 12 aboard Suspected Illegal Entry Vessel (SIEV) 657 <i>Fowley</i> . They were transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
8 May 2013	Transferred to Wickham Point APOD.
18 June 2013	Transferred to Darwin Airport Lodge APOD.
20 July 2013	Transferred to Brisbane Immigration Transit Accommodation.
5 September 2013	Transferred to community detention.

Recent visa applications/case progression

The Department of Immigration and Border Protection's (DIBP) advised that prior to ministerial intervention, Mr X and his sisters 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.¹

¹ DIBP's 24-month review dated 28 April 2015 stated that Mr X and his sisters were detained under s 189(1), based on this information, the Ombudsman's office concluded that Mr X and his sisters had arrived as 'direct entry persons' and were not subject to the s 46A bar. DIBP's 30-month review dated 21 October 2015 confirmed that although Mr X and his sisters were detained under s 189(1), they had not arrived as 'direct entry persons' and were subject to the s 46A bar.

13 March 2014	DIBP notified Mr X and his sisters of the unintentional release of personal information ² and advised that the privacy breach would be taken into account when considering their protection claims.
12 June 2014	DIBP invited Mr X and his sisters to comment on the unintentional release of personal information. They provided their response on 27 August 2014.
13 August 2015	The Minister lifted the bar under s 46A to allow Mr X and his sisters to lodge a temporary visa application.
18 September 2015	DIBP invited Mr X to lodge a temporary visa application. Ms Y and Miss Z were notified that they are eligible to receive the Primary Application Information Service (PAIS) to assist them with lodging a temporary visa application. On 28 September 2015 Ms Y and Miss Z declined the PAIS assistance. On 7 October 2015 the family's migration agent advised DIBP that they would lodge a temporary visa application with their brother as a family unit.
15 October 2015	Mr X and his sisters lodged a Safe Haven Enterprise visa (SHEV) application.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X was previously identified as vulnerable as he was an unaccompanied minor at the time of his arrival in Australia and the primary carer of his younger sisters. He received supportive counselling and improvements in his condition were reported.

Ms Y

IHMS advised that Ms Y disclosed a history of torture and trauma but declined a referral for specialist counselling. She attended psychiatric and psychological counselling for management of grief and situational anxiety following the death of her mother in Country A. IHMS advised that improvements in her condition were reported and she continued to attend group counselling before she was transferred to community detention.

IHMS further advised that Ms Y was diagnosed with a previous hepatitis B infection. She was identified as immune and non-infectious and no treatment was required.

Miss Z

IHMS advised that Miss Z received psychological and psychiatric counselling after presenting with symptoms of grief following the death of her mother. She was closely monitored by the mental health team and provided with psychotherapy prior to her transfer to community detention.

IHMS further advised that Miss Z received treatment for a parasitic infection.

² In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

Case status

Mr X and his sisters were detained on 22 April 2013 after arriving in Australia aboard SIEV *Fowley* and have been held in detention for over three years.

On 13 August 2015 the Minister lifted the bar under s 46A to allow Mr X and his sisters to apply for a temporary visa and on 15 October 2015 Mr X and his sisters lodged a SHEV application.