

## 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 and her daughters who have remained in immigration detention for more than 24 months (two years).

<b>Name</b>	Ms X (and daughters)
<b>Citizenship</b>	Stateless (claimed), born in Country A
<b>Year of birth</b>	1973

### Family details

<b>Family members</b>	Miss Y (daughter)	Miss Z (daughter)
<b>Citizenship</b>	Stateless (claimed), born in Country A	Stateless (claimed), born in Country A
<b>Year of birth</b>	2005	2007

<b>Ombudsman ID</b>	1003161
<b>Date of DIBP's report</b>	28 July 2015
<b>Total days in detention</b>	734 (at date of DIBP's report)

### Detention history

24 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 805 <i>Fruitdale</i> . They were transferred to Facility B.
26 March 2014	Transferred to Facility C.
24 July 2014	Transferred to Facility B.
26 July 2014	Transferred to Facility C.
19 August 2014	Transferred to Facility B.
3 March 2015	Transferred to community detention.

### Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Ms X and her daughters are part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A(2).	
5 February 2015	Ms X and her daughters were referred for ministerial intervention under s 195A for consideration of a Bridging visa.
11 February 2015	The Minister declined to intervene under s 195A.

## Criminal matters

29 October 2013	<p>Ms X was arrested by the Australian Federal Police (AFP) and charged with assault.</p> <p>A DIBP Incident Report recorded that Ms X allegedly threatened to self-harm during an interview with the AFP in relation to her arrest and assault charges.</p>
10 March 2014	<p>Ms X appeared before the V Magistrates Court and entered a plea of guilty to assault. She was placed on a \$700 conditional release order and received a suspended sentence.</p>

## Health and welfare

### Ms X

July 2013	<p>International Health and Medical Services (IHMS) advised that during her induction health assessment Ms X presented with diabetes. She attended a consultation with a diabetic specialist and received lifestyle and diet education. Her general practitioner (GP) continues to monitor her condition.</p>
September 2013	<p>IHMS advised that Ms X was diagnosed with a gastrological condition and was prescribed with medication. Her GP continues to monitor her condition.</p>
19 December 2014 - 19 February 2015	<p>IHMS advised that Ms X experiences recurring foot wounds and infections related to her diabetes. She attended three appointments with a podiatrist during this period for treatment and was advised to wear supportive footwear.</p>

### Miss Y

8 July 2014	<p>Referred to an ear, nose and throat (ENT) specialist following recurring tonsillitis and difficulty breathing. The specialist recommended that her tonsils be removed and she was placed on a hospital waiting list.</p>
14 July 2014	<p>Attended an appointment with a paediatrician following obesity concerns. Her paediatrician noted that there were no current health concerns related to her weight and she was provided with lifestyle modification education.</p>
28 August 2014	<p>Referred to an orthopaedic specialist after her GP noted potential foot deformities. It was recommended that she wear supportive footwear. IHMS advised that this appointment remains outstanding.</p>

### Miss Z

9 March 2014	<p>Referred to an ENT specialist following recurrent middle ear infections. She was provided with education and prescribed with pain relief medication.</p>
10 June 2014	<p>The GP noted that Miss Z was morbidly obese and experiencing S. Miss Z was commenced on monthly weight checks and was provided with dietary education.</p>

11 June 2014	Referred to the mental health team by her GP following concerns about her obesity and alleged history of physical abuse from her mother. IHMS advised that she attended regular counselling, and improvements have been noted.
July 2014	Attended an appointment with an ENT specialist who recommended surgery to remove her tonsils and insert grommets into her right ear. IHMS advised that she was placed on a hospital waiting list.
14 July 2014	Reviewed by a paediatrician and dietician following ongoing obesity and constipation concerns. Pathology testing was conducted and she was diagnosed with increased cholesterol. IHMS advised that Ms X was provided with dietary and lifestyle education to manage Miss Z's weight loss.
August 2014	IHMS advised that Miss Z's school had been a major protective factor and mental health intervention was requested when necessary.
March 2015	Reviewed by her GP and provided with further lifestyle education. Her condition continues to be monitored by her GP.

#### **Detention incidents**

2 August 2013	A DIBP Incident Report recorded that two detainees alleged that Ms X had assaulted Miss Y and Miss Z.
29 October 2013	A DIBP Incident Report recorded that Ms X allegedly assaulted Miss Z.
7 November 2013	A DIBP Incident Report recorded that Ms X allegedly forcibly pushed the back of Miss Z's head. No further information was provided.
25 March 2014	A DIBP Incident Report recorded that Ms X and her daughters were involved in a passive protest.  DIBP reported that unplanned use of force was required after Ms X assaulted Serco officers. No further information was provided.

#### **Other matters**

28 July 2015	DIBP advised that Ms X has a son, Mr Q, who is a permanent resident of Australia.
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### **Ombudsman assessment/recommendation**

The Ombudsman notes that Ms X and her daughters were detained on 24 July 2013 after arriving in Australia aboard SIEV *Fruitdale* and have been held in detention for over two years with no processing of their protection claims.

The Ombudsman notes with concern that without an assessment of Ms X and her daughters' claims to determine if they are found to engage Australia's protection obligations, it appears likely that they will remain in detention for an indefinite period.

The Ombudsman notes the Minister's recent Statements to Parliament, in which he advises that DIBP is progressing the substantial caseload of maritime arrivals, and will provide him with advice to assist his consideration of whether to lift the bar to allow these people to lodge a Temporary Protection visa application.

The Ombudsman recommends that the Minister lift the bar under s 46A and processing of the family's protection claims commence as soon as possible.