

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 children who remained in immigration detention for more than 36 months (three years).

The first report 1001864¹ 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.

Name	Ms X (and children)
Citizenship	Country A
Year of birth	1971

Family details

Family members	Master Y (son)	Miss Z (daughter)
Citizenship	Country A	Country A
Year of birth	2003	2003

Ombudsman ID	1003274
Date of DIBP's reports	23 March 2015 and 8 September 2015
Total days in detention	1,094 (at date of DIBP's latest report)

Detention history

9 September 2012	Ms X and her children 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'. ² The family were transferred to Darwin Airport Lodge Alternative Place of Detention.
13 December 2012	Transferred to community detention.
23 December 2015	Granted Temporary Protection visas (TPVs) 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 children 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 Ms X and her children were previously reported on in a group report of people who arrived on SIEV 440 *Uvaursi*.

² 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.

13 March 2014	DIBP notified Ms X and her children of the unintentional release of personal information ³ and advised that the privacy breach would be taken into account when considering the family's protection claims.
26 May 2015	The Minister lifted the bar under s 46A to allow the family to lodge a temporary visa application.
15 July 2015	DIBP invited Ms X and her children to lodge a temporary visa application.
23 December 2015	Granted TPVs.

Health and welfare

Ms X

22 September 2012	International Health and Medical Services (IHMS) advised that a previous hepatitis B infection was identified during routine pathology testing. Ms X is immune and non-infectious.
18 December 2012	IHMS reported that Ms X attended multiple physiotherapy sessions for her ongoing back pain (dates not provided).
20 December 2012	Presented with symptoms of depression and situational stress and requested a referral for psychological counselling.
February 2013	Presented with recurring back pain and advised that physiotherapy had been ineffective. An x-ray and computed tomography scan identified spinal abnormalities and she was provided with pain relief medication and a back brace. She was referred to a rheumatology clinic.
21 May 2013	Ms X was reviewed by a psychologist and it was recommended that she attend further counselling.
10 September 2013	Presented with ongoing shoulder pain. An x-ray and ultrasound identified no abnormalities and she was prescribed with pain relief medication. IHMS advised that she received corticosteroid injections and was referred for physiotherapy.
February 2014	Referred to a psychiatrist after presenting with depression and stress during Miss Z's hospital admission. She was prescribed with antidepressant medication.
June 2014	A spinal and pelvic x-ray identified slight scoliosis and minor degenerative changes.
23 September 2014 – 27 March 2015	IHMS reported that Ms X attended multiple physiotherapy sessions and no exacerbation of her back pain had been reported.
25 September 2014	Attended an initial consultation with a psychologist. IHMS advised that four sessions were scheduled but Ms X did not attend.

³ 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.

12 February 2015	Diagnosed with a medical condition and referred to a specialist.
22 April 2015 and 19 June 2015	Spinal and knee magnetic resonance imaging scans identified moderate abnormalities. She was prescribed with pain relief medication and referred for physiotherapy.
24 August 2015	IHMS reported that Ms X was reviewed by a specialist and diagnosed with a further medical condition. She was prescribed with medication and monitored by a general practitioner (GP).

Master Y

DIBP provided details of Master Y's health and welfare. No significant ongoing physical health concerns were noted.	
25 September 2014	Master Y was reviewed by a psychologist after the family's case worker raised concerns about his mental health. The psychologist noted that Master Y was experiencing symptoms of anxiety, including decreased concentration, irritability, low mood and limited sleep.
10 October 2014 – 20 November 2014	Attended four psychological counselling sessions. He was provided with supportive counselling and strategies to cope with his anxiety. No further concerns were reported.

Miss Z

10 September 2012	During her induction health assessment, Ms X advised that Miss Z has cerebral palsy with spastic deplegia, a dislocated right hip and epilepsy. IHMS advised that Miss Z requires a wheelchair and carer assistance for all aspects of daily life. Prior to her release from detention, Miss Z attended regular physiotherapy, hydrotherapy and paediatric assessments and was regularly reviewed by a rehabilitation consultant at a hospital specialist clinic.
10 September 2012 – September 2014	Miss Z attended multiple appointments with an orthopaedic surgeon, paediatrician, paediatric neurologist, rehabilitation consultant and occupational therapist. She was prescribed with anticonvulsant medication and received injections in her hip to reduce her pain.
29 July 2013	An electroencephalogram identified brain abnormalities related to her epilepsy. IHMS advised that her medication was effective and her condition was stable.
20 January 2014	Miss Z was reviewed at a specialist clinic. It was noted that her medication was effective and her mental health was stable. IHMS advised that Ms X was provided with strategies to manage Miss Z's condition.

25 February 2014 – 10 March 2014	Admitted to a children’s hospital for hip surgery. IHMS advised that Miss Z experienced post-operative complications and was reviewed by a paediatric intensive care specialist. She was discharged with advice to attend scheduled appointments. IHMS advised that Miss Z presented with behavioural issues, including episodes of screaming following her hip surgery. She was assessed by multiple specialists and referred for counselling.
2 October 2014 – 27 March 2015	IHMS advised that during this reporting period there were no reports of Miss Z experiencing a seizure and she was considered stable.
30 October 2014	Reviewed at a specialist clinic following post-operative hip pain. She was prescribed with pain relief medication.
13 November 2014	During a combined specialist assessment, Miss Z was provided with exercises and it was recommended that she be provided with a standing frame. IHMS advised that a frame had not been provided at the time of its latest report.
8 December 2014	A paediatric neurologist noted that there had been improvements in Miss Z’s mental health but she continued to present with low mood.
2 April 2015	The neurologist noted Ms X had reported that Miss Z was having conversations with imaginary friends. Her mother agreed to attend regular school counselling sessions with Miss Z.
24 April 2015 – 15 June 2015	An orthopaedic surgeon provided her with orthotics to encourage her to stand out of her wheelchair.
June 2015	Ms X informed the GP that she ceased anticonvulsant medication and improvements in Miss Z’s condition had been noted. IHMS advised that Miss Z’s specialists agreed to ongoing monitoring without medication.

Other matters

21 December 2012	DIBP received a complaint from the Australian Human Rights Commission (AHRC) on behalf of Ms X. On 22 May 2013 the AHRC advised DIBP that it had decided to finalise Ms X’s complaint before a response was provided.
28 July 2015	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. The Ombudsman’s office also identified that there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i> .
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 children 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 children were granted TPVs on 23 December 2015 and released from immigration detention.

Ms X and her children were detained on 9 September 2012 after arriving in Australia aboard SIEV *Uvaursi* and were held in detention for more than three years before being granted TPVs.

The Ombudsman notes DIBP considered that Ms X and her children were subject to the bar under s 46A for more than two and a half years until the Minister lifted the bar on 26 May 2015 to allow the family 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 and her children 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 a response to some of the issues on 20 April 2016. The Ombudsman is considering DIBP's response and makes no recommendations in this report.