

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 nephew who have remained in immigration detention for more than 30 months (two and a half years).

Name	Ms X (and nephew)
Citizenship	Country A
Year of birth	1977

Family details

Family members	Mr Y (nephew)
Citizenship	Country A
Year of birth	1997

Ombudsman ID	1002554
Date of DIBP's reports	29 May 2015 and 18 November 2015
Total days in detention	913 (at date of DIBP's latest report)

Detention history

19 May 2013	Ms Y and her nephew 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) 709 <i>Oswestry</i> , indicating that they arrived as 'direct entry persons'. ¹ They were transferred to Wickham Point Alternative Place of Detention (APOD).
28 June 2014	Transferred to Bladin APOD.
26 December 2014	Transferred to Perth Immigration Residential Housing (IRH).
26 January 2015	Transferred to Perth Immigration Detention Centre.
2 February 2015	Transferred to Perth IRH.
18 February 2015	Transferred to community detention.

Visa applications/case progression

19 June 2014	Lodged a Protection visa application.
16 December 2014	DIBP advised that following legislative amendment, Ms X and her nephew are only eligible for temporary visas.
17 December 2014	Attended an interview in relation to their Temporary Protection visa (TPV) application.
13 May 2015	TPV application refused.

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.

20 May 2015	Appealed to the Refugee Review Tribunal (RRT).
2 October 2015	The Administrative Appeals Tribunal (AAT) ² affirmed original decision.
28 October 2015	Requested judicial review by the Federal Circuit Court (FCC).

Health and welfare

Ms X

6 August 2014	International Health and Medical Services (IHMS) advised that Ms X was diagnosed with breast cancer.
11 September 2014 – ongoing	Referred for counselling following her diagnosis of breast cancer and concerns about her nephew as she is his primary carer.
14 October 2014	She was admitted to hospital for urgent surgery following an appointment with a hospital breast clinic.
20 October 2014	Post-surgery pathology results reported a further malignancy.
November 2014	During her 18-month psychiatric assessment, she was diagnosed with major depressive disorder, post-traumatic stress disorder and acute stress disorder. She was not prescribed with any medication, but continued seeing the mental health team for individual and group counselling.
11 November 2014	Attended hospital for a second surgery with plans for hormonal, radiotherapy and chemotherapy treatments to follow. She was referred to the Cancer Council for a prosthesis and physiotherapy for rehabilitation.
December 2014	Additional scans were performed following surgery, with no abnormalities identified for secondary cancers.
12 December 2014	Prescribed with antibiotics following a viral infection. Further tests were conducted following treatment with no abnormalities identified.
January 2015 – ongoing	Following a transfer into community detention, Ms X was referred to a new oncologist who updated her oncology plan to include monitoring of her liver function. Her condition was monitored by the oncology team and a general practitioner (GP). Disclosed a history of torture and trauma but declined counselling. Ms X's mental health is monitored by her GP.
21 January 2015	Ms X suffers from gastric reflux which is a side effect of chemotherapy treatment. She was prescribed with medication.

Mr Y

IHMS advised that Mr Y has not required treatment for any major physical or mental health issues.

² On 1 July 2015 the Migration Review Tribunal and RRT were merged into the AAT.

Other matters

14 October 2014	Ms X lodged a complaint with the Australian Human Rights Commission (AHRC) alleging breaches of human rights in relation to her and her nephew's length of time in detention. DIBP provided a response and on 6 March 2015 the AHRC advised DIBP that Ms X's complaint was closed.
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Case status

Ms X and her nephew have been found not to be owed protection under the Refugee Convention and the complementary protection criterion. They are awaiting the outcome of judicial review.
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