

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O report on Miss X who has remained in immigration detention for more than 66 months (five and a half years). The previous reports are:

1612/13 tabled in Parliament on 4 December 2013

1001304 tabled in Parliament on 24 September 2014

1001992 tabled in Parliament on 18 March 2015

1002494 tabled in Parliament on 31 August 2016.

This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Miss X
Citizenship	Country A
Year of birth	2005
Ombudsman ID	1001170-O
Date of DIBP's reports	5 May 2016 and 3 November 2016
Total days in detention	2004 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002494), Miss X has remained in community detention under the care of a contracted service provider. Due to her age she remains under the guardianship of the Minister.	
7 September 2016	The Minister intervened under s 197AD of the <i>Migration Act 1958</i> and varied Miss X's residential address.

Recent visa applications/case progression

18 January 2016	The Full Federal Court (FFC) set aside the decision of the Federal Circuit Court to dismiss Miss X's application for judicial review of the Independent Protection Assessment (IPA) recommendation that she was not owed protection. The FFC found that Miss X was not afforded procedural fairness and ordered that the Minister be restrained from removing her from Australia until her protection claims had been assessed according to law. Her case was referred to the Department of Immigration and Border Protection (the department) for reconsideration.
3 November 2016	The department advised that it was preparing a submission for the Minister on Miss X's case, and other similar cases, seeking his consideration on whether to intervene and lift the s 46A bar to allow the department to assess the protection claims through the statutory process.
The department advised that Miss X will not be considered for the grant of a Bridging visa while she remains a minor.	

Health and welfare

International Health and Medical Services (IHMS) advised that in January 2016 Miss X attended an orthodontist for review and treatment and that it received the treatment plan in February 2016. On 27 September 2016 IHMS advised that Miss X had attended two further dental consultations and it was sourcing the clinical documentation to determine what treatment occurred and whether any follow up was required.

Ombudsman assessment/recommendation

Miss X was detained on 10 May 2011 after arriving in Australia by sea as a minor aged five with her adult half-brother and has been held in detention for more than five and a half years.

Miss X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion through a non-statutory process. Following an FFC decision that she was not afforded procedural fairness in the IPA review of her case, the department advised it would reconsider her protection claims. It stated it was preparing a submission for the Minister on Miss X's case, and other similar cases, seeking his consideration on whether to intervene and lift the s 46A bar to allow the department to assess her protection claims through the statutory process.

The Ombudsman notes the length of time Miss X has spent in detention and recommends that reconsideration of her protection claims be expedited if this matter has not yet been finalised.