

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

The first report 1002381¹ was tabled in Parliament on 25 November 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Ms X (and sister)
Citizenship	Country A
Year of birth	1997

Family members

Name	Miss X (sister)
Citizenship	Country A
Year of birth	1999

Ombudsman ID	1003450
Date of DIBP's report	23 September 2015
Total days in detention	911 (at date of DIBP's report)

Detention history

26 March 2013	Ms X and Miss Y were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland as unaccompanied minors aged 16 and 14 aboard Suspected Illegal Entry Vessel (SIEV) 619 <i>Triumph</i> , indicating that they arrived as 'direct entry persons'. ² They were transferred to Darwin Airport Lodge Alternative Place of Detention.
1 April 2013	Transferred to Brisbane Immigration Transit Accommodation.
16 July 2013	Transferred to community detention.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Ms X and Miss Y 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 sister were previously reported on in a group of unaccompanied minors' report who arrived on SIEV 619 *Triumph*.

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 Miss Y of the unintentional release of personal information. ³
16 June 2015	The Minister lifted the bar under s 46A to allow Miss Y to lodge a temporary visa application.
9 July 2015	DIBP notified Miss Y that she was eligible for the Primary Application Information Service to assist with lodging a temporary visa application. She accepted the offer on 31 July 2015.
14 August 2015	The Minister lifted the bar under s 46A to allow Ms X to lodge a temporary visa application.
17 September 2015	DIBP invited Ms X to lodge an application for a temporary visa.

Health and welfare

Ms X

2 February 2015	International Health and Medical Services (IHMS) reported that Ms X was compliant with her medication and she reported that it was helping her mood. It was recommended that she continue taking her current medication for six to nine months.
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Miss Y

IHMS advised that Miss Y did not require treatment for any major physical or mental health issues since its previous report to the Ombudsman.

Other matters

28 July 2015	<p>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.</p> <p>The Ombudsman's office also identified that there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p>
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 Miss Y who arrived on SIEV <i>Triumph</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>

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.

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	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> . 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.
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.

Ombudsman assessment/recommendation

Ms X and Miss Y were detained on 26 March 2013 after arriving in Australia as unaccompanied minors aged 16 and 14 aboard SIEV *Triumph* and have been held in detention for over two and a half years with no processing of their protection claims.

The Ombudsman notes that DIBP considered that Ms X and Miss Y were subject to the bar under s 46A for more than two years until the Minister lifted the bar on 16 June 2015 and 14 August 2015 to allow Miss Y and Ms X, respectively, 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 Miss Y may not have been subject to the s 46A bar due to their arrival on the Australian mainland as 'direct entry persons' on 26 March 2013.

The Ombudsman notes that DIBP has commenced an internal investigation into the issues raised by the Ombudsman's own motion investigation and that it will keep the Ombudsman advised as this progresses. The Ombudsman recommends that priority is given to resolving the circumstances of Ms X and Miss Y's method of arrival, the provision of the *Migration Act 1958* under which they were detained, and whether they should have been subject to the s 46A bar.