

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 Mr X who remained in restricted immigration detention for more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1003077
Date of DIBP's report	21 April 2015
Total days in detention	Not provided

Detention history

14 April 2013	Mr X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 648 <i>Weinem</i> , indicating that he may have arrived as a 'direct entry person'. ¹
9 October 2015	Granted a Bridging visa and released from detention.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to being released from detention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister had not lifted the bar under s 46A.	
25 August 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
9 October 2015	Granted a Bridging visa.

Health and welfare

13 May 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and presented with symptoms of stress, including anxiety, loss of sleep and an ongoing eye tic. He was prescribed with medication and attended psychological counselling.
21 May 2013	Mr X fractured his wrist while playing sport. His wrist was placed in a cast and he was referred to a plastic surgeon.
September 2013	The mental health team reported that his eye tic and sleep issues had improved.

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.

4 April 2014	Presented to a general practitioner (GP) with painful lumps in his forearms. An ultrasound was conducted and he was diagnosed with a benign medical condition.
July 2014	Referred to a surgeon following ongoing pain related to his medical condition.
September 2014	During a mental health assessment, Mr X advised he was experiencing sleep issues related to situational stressors. He was referred for counselling.
22 October 2014	During a review with a psychiatrist it was noted that Mr X was coping effectively with his ongoing detention and no significant mental health concerns were identified.
3 December 2014	Assessed at a hospital emergency department following an ankle injury. An x-ray identified no abnormalities and he was discharged with advice to attend a review.
21 December 2014	Mr X presented with ongoing pain and swelling related to his ankle injury. An x-ray identified soft tissue damage. IHMS advised that he was monitored by a GP.
January 2015	During a mental health assessment Mr X advised he was experiencing symptoms of anxiety related to his ongoing detention. IHMS reported that no further concerns were identified.
10 March 2015	Presented to a hospital emergency department with chest pain. An electrocardiogram identified no abnormalities and all tests returned normal results. He was diagnosed with musculoskeletal chest pain and provided with treatment and discharged the same day.
23 March 2015	Mr X became aggressive and abusive towards IHMS following notification of a medical assessment outcome. He was removed from the clinic by Serco officers and his consultation was concluded. No further information was provided.
14 April 2015	During a mental health assessment, Mr X advised he was experiencing symptoms of stress and anxiety related to his ongoing detention. He was provided with counselling and advised to self-refer as required.

Detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous behavioural incidents including assaulting detention centre staff and other detainees and displaying aggressive and abusive behaviour towards detention centre staff and other detainees.

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 Mr X who arrived on SIEV <i>Weinem</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.

Information provided by Mr X

During an interview with Ombudsman staff on 2 September 2015 at Yongah Hill Immigration Detention Centre (IDC) Mr X said he had seen his case manager earlier that day and had been informed he could lodge a Protection visa application within the next 28 days.

Mr X stated everyone who arrived with him had been released into the community and he did not understand why he was still in detention.

Mr X said he struggles to sleep during the night as he becomes anxious and stressed. He said he has tried to consult with IHMS but often his symptoms have resolved before he is able to attend an appointment. He said he has had to wait one to two weeks before he could see medical staff.

Mr X said the facilities at Yongah Hill IDC were good and he participates in most of the programs and activities offered including English and music classes.

Mr X said he contacts his family in Country A every fortnight and they worry about him and do not understand why he is still in detention. He said he does not have any personal visitors, however many people from the community often visit.

Mr X said he does not have anyone to assist him with his Protection visa application but was aware of organisations that may provide assistance.

Ombudsman assessment

Mr X was granted a Bridging visa on 9 October 2015 and released from immigration detention.

Mr X was detained on 14 April 2013 after arriving in Australia aboard SIEV *Weinem* and was held in restricted detention for over two years before being granted a Bridging visa.

The Ombudsman notes that DIBP considered that Mr X was subject to the bar under s 46A for more than two years until the Minister lifted the bar on 25 August 2015 to allow Mr X 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 Mr X may not have been subject to the s 46A bar due to his arrival and detention on the Australian mainland as an apparent 'direct entry person' on 14 April 2013.

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.