

## 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 a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1993
<b>Ombudsman ID</b>	1002950
<b>Date of DIBP's reports</b>	28 April 2015 and 21 October 2015
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

22 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) 662 <i>Lambeth</i> , indicating that he arrived as a 'direct entry person'. <sup>1</sup>  He was transferred to Northern Immigration Detention Centre (IDC), Darwin.
10 May 2013	Mr X absconded from Northern IDC. He was located the following day and re-detained under s 189(1).
2 July 2013	Transferred to Yongah Hill IDC.
25 January 2014	Transferred to Christmas Island IDC.
12 June 2015	Transferred to Perth IDC.
22 July 2015	Transferred to Christmas Island IDC.
25 July 2015	Transferred to Wickham Point Alternative Place of Detention (APOD). <sup>2</sup>
26 November 2015	Granted a Bridging visa with associated Temporary Humanitarian Stay (THS) visa and released from detention.

### Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, 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.

<sup>1</sup> 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.

<sup>2</sup> DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X was accommodated in the single adult male compound at Wickham Point APOD.

12 March 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. <sup>3</sup>
25 September 2015	Mr X's case was referred on a ministerial intervention submission for consideration to lift the s 46A bar to allow him to lodge a temporary visa application.
29 September 2015	The Minister lifted the s 46A bar to allow Mr X to lodge a temporary visa application.
13 October 2015	Mr X's case was referred on a further ministerial intervention submission for consideration under s 195A for the grant of a Bridging visa.
26 November 2015	Granted a Bridging visa with an associated THS visa.

### Health and welfare

13 May 2013	International Health and Medical Services (IHMS) advised that Mr X was diagnosed with hepatitis B following his induction health assessment.
14 October 2013	He was referred for a hepatology review but IHMS was not informed if the review had taken place.
15 February 2015	He was allegedly assaulted by another detainee over computer usage. He was medically cleared by IHMS but reported symptoms of sleep disturbance, hypervigilance, anxiety and low confidence. He was referred to a psychologist and provided with therapy and support.
27 March 2015	He ceased seeing the psychologist after he received negative news about his immigration pathway, stating that the psychologist was unable to help him.
14 May 2015	He reported to the general practitioner (GP) that he had been the victim of a sexual assault a week prior. He was reviewed by mental health staff and informed them that he had reported the matter to the police.
14 June 2015	He requested an appointment with the psychologist but was unable to attend due to a conflicting appointment, and his transfer to Perth IDC.
21 July 2015	A liver ultrasound and pathology identified no abnormalities and he was monitored by his GP.

<sup>3</sup> 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.

### Detention incidents

10 May 2013	DIBP advised that Mr X absconded from Northern IDC. He was located by the Northern Territory Police the following day and re-detained under s 189(1). The matter was investigated by the Australian Federal Police (AFP) and Mr X was charged. On 18 February 2014 he was acquitted of the charge and the matter was finalised.
7 May 2015	DIBP Incident Reports recorded that Mr X alleged that he had been sexually assaulted and harassed by another detainee. DIBP advised that the alleged perpetrator was relocated to another compound within Christmas Island IDC and the incident was referred to the AFP. On 14 May 2015 Mr X retracted the allegation, signed a withdrawal complaint form and the matter was closed.
9 July 2015 – 26 July 2015	A DIBP Incident Report recorded that pre-approved use of force in the form of mechanical restraints was used on seven occasions during escorted medical and court visits.

### Other matters

6 March 2015	DIBP advised that Mr X lodged a complaint with the Australian Human Rights Commission. On 27 March 2015 DIBP provided its response and on 3 July 2015 DIBP was notified that the complaint had been resolved through the conciliation process.
28 July 2015	The Ombudsman's office requested information from DIBP about the circumstances of Mr X's arrival and whether he should be subject to the s 46A bar, given that his arrival information indicated that he arrived on the Australian mainland as a 'direct entry person'.
30 July 2015	DIBP advised that it expected to provide clarification as soon as information had been sourced from other areas within DIBP.
5 August 2015	DIBP advised that it was still seeking information in order to finalise a response.
13 August 2015	DIBP advised that information was still being sourced from other areas within DIBP and a response was expected to be provided soon.
25 August 2015	DIBP advised that a response was imminent.
1 September 2015	The Ombudsman's office opened an investigation into the arrival and detention circumstances of Mr X and others who arrived in Australian waters on 17 April 2013 aboard SIEV <i>Lambeth</i> . A response from DIBP was requested by 30 September 2015 but not received.
2 October 2015	DIBP notified the Ombudsman's office that its response was awaiting clearance and would be delayed.
14 October 2015	DIBP notified the Ombudsman's office that its response was delayed due to the complexity of the response.
22 October 2015	DIBP notified the Ombudsman's office that its response was still not finalised and would be further delayed.

13 November 2015	The Ombudsman's office requested further information under its own motion powers into the arrival and detention circumstances of people, including Mr X, 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>, including Mr X.</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>

#### **Ombudsman assessment/recommendation**

Mr X was granted a Bridging visa with an associated THS visa on 26 November 2015 and released from immigration detention.

Mr X was detained on 22 April 2013 after arriving in Australia aboard SIEV *Lambeth*, and was held in restricted detention for over two and a half 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 over two and a half years until the Minister lifted the bar on 29 September 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 on the Australian mainland as a 'direct entry person' on 22 April 2013. If this is the case, it would appear that Mr X was wrongfully prevented from applying for a temporary visa for two and a half years and may have been detained for a longer period than required.

The Ombudsman recommends that immediate priority is given to resolving the circumstances of Mr X's method of arrival, the provision of the *Migration Act 1958* under which he was detained, and whether he should have ever been subject to the s 46A bar.