

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 has remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1979
Ombudsman ID	1002952
Date of DIBP's reports	28 April 2015 and 21 October 2015
Total days in detention	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'. ¹ He was transferred to Northern Immigration Detention Centre (IDC), Darwin.
27 July 2013	Transferred to Yongah Hill IDC.
24 March 2015	Transferred to Wickham Point Alternative Place of Detention (APOD). ²

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.	
13 March 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ³
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.

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.

² 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 is accommodated in the single adult male compound at Wickham Point APOD.

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.

29 September 2015	The Minister lifted the bar under s 46A to allow him to lodge a temporary visa application.
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Health and welfare

April 2013 – ongoing	International Health and Medical Services (IHMS) advised that during his induction health assessment, Mr X reported that he had previously undergone surgery following a leg injury. Mr X presented with leg pain on multiple occasions and was referred to an orthopaedic surgeon for assessment.
13 May 2013	Mr X was diagnosed with hepatitis B following routine pathology testing. He was identified as immune and provided with education by a general practitioner (GP).
15 July 2014	Admitted to hospital for leg surgery. IHMS advised that he was discharged the same day.
October 2014 – ongoing	Disclosed a history of torture and trauma during a mental health assessment and was referred for specialist counselling. IHMS advised that Mr X was reviewed by a psychiatrist who noted that he was experiencing symptoms related to post-traumatic stress disorder, depression and insomnia. His mental health continued to be monitored by the mental health team.
28 September 2015 – ongoing	Referred to an orthopaedic surgeon after presenting with pain related to his leg surgery. His condition continued to be monitored by his GP.

Other matters

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 <i>SIEV 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	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. 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.

Ombudsman assessment/recommendation

Mr X was detained on 22 April 2013 after arriving in Australia aboard SIEV *Lambeth*, and has been held in restricted detention for over two and a half years.

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.

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.