

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 Mr X who has remained in restricted immigration detention for more than 36 months (three years).

The first report 1002017¹ was tabled in Parliament on 12 August 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1002859
Date of DIBP's reports	13 May 2015 and 12 November 2015
Total days in detention	1,094 (at date of DIBP's latest report)

Recent detention history

13 November 2012	Mr X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard SIEV 542 <i>Cadillac</i> , indicating that he arrived as a 'direct entry person'. ² He was transferred to Northern Immigration Detention Centre (IDC), Darwin.
20 November 2012	Transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
23 November 2012	Transferred to Wickham Point IDC.
5 April 2013	Transferred to Scherger IDC.
25 January 2014	Transferred to Curtin IDC.
28 August 2014	Transferred to Yongah Hill IDC.
24 March 2015	Transferred to Wickham Point APOD. ³

¹ Mr X was previously reported on in a group report of people who arrived on the Suspected Illegal Entry Vessel (SIEV) 524 *Cadillac* and were detained on 12 and 13 November 2012.

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.

³ Wickham Point was designated as an APOD on 11 July 2013. 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.

Recent 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 were subject to the bar under s 46A.	
16 January 2013	Mr X's case was referred on a first stage ministerial submission for consideration under s 195A for the grant of a Bridging visa.
17 January 2013	The former Minister agreed to consider Mr X's case.
18 January 2013	DIBP advised that Mr X's case was reassessed for referral to the former Minister and it was determined that he was not suitable following his alleged involvement in criminal matters overseas.
12 March 2014	DIBP notified Mr X of the unintentional release of personal information ⁴ and advised that the privacy breach would be taken into account when considering Mr X's protection claims.
11 August 2015	Mr X's case was referred on a ministerial submission for consideration to lift the bar under s 46A.
13 August 2015	The Minister lifted the bar under s 46A to allow him to lodge a temporary visa application.
28 August 2015	DIBP invited Mr X to lodge an application for a temporary visa.
12 November 2015	DIBP advised that Mr X is yet to lodge an application.

Health and welfare

3 December 2012 – ongoing	International Health and Medical Services (IHMS) advised that Mr X was identified as a tuberculosis contact. A chest x-ray and skin test identified no abnormalities. He continues to be monitored as per state policy.
26 April 2013 – 17 January 2014	Mr X disclosed a history of torture and trauma and attended eight specialist counselling sessions.
29 October 2013	Mr X was referred for an ultrasound after presenting with ongoing pain related to a previous injury. The scans identified minor abnormalities and he was diagnosed with a medical condition. Mr X was advised that no further treatment was required at that time.
January 2015	Reviewed by a specialist following ongoing pain related to his medical condition.
16 February 2015	An ultrasound was conducted and he was referred to a specialist for further assessment of his medical condition.

⁴ 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.

Other matters

20 October 2015	DIBP advised that Mr X was previously identified as a person of interest in relation to his alleged involvement in criminal activities overseas.
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>Cadillac</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.
------------------	--

Ombudsman assessment/recommendation

Mr X was detained on 13 November 2012 after arriving in Australia aboard SIEV *Cadillac*, and has been held in restricted detention for over three years with no processing of his protection claims.

The Ombudsman notes that DIBP considered that Mr X was subject to the bar under s 46A for more than two and a half years until the Minister lifted the bar on 13 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 on the Australian mainland as a 'direct entry person' on 13 November 2012.

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 Mr X's method of arrival, the provision of the *Migration Act 1958* under which he was detained, and whether he should have been subject to the s 46A bar.