

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

The first report 1001917¹ was tabled in Parliament on 13 May 2015. This report updates the material in that report and should be read in conjunction with the previous report.

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| Name | Master X |
| Citizenship | Country A |
| Year of birth | 1998 |
| Ombudsman ID | 1002380 |
| Date of DIBP's reports | 14 April 2015 and 30 September 2015 |
| Total days in detention | 1,094 (at date of DIBP's latest report) |

Detention history

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| 1 October 2012 | Master X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Darwin, Australia as an unaccompanied minor aged 14 aboard Suspected Illegal Entry Vessel (SIEV) 463 <i>Rankin</i> , indicating that he arrived as a 'direct entry person'. ² He was transferred to Darwin Airport Lodge Alternative Place of Detention (APOD). |
| 22 November 2012 | Transferred to Leonora APOD. |
| 29 January 2013 | Transferred to Pontville APOD. |
| 4 July 2013 | Transferred to community detention. |
| The Department of Immigration and Border Protection (DIBP) advised that Master X resides in community detention with his maternal aunt, Ms Y, who is residing in the community on a Bridging visa. | |

Visa applications/case progression

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| DIBP advised that prior to ministerial intervention, Master 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 September 2013 | Lodged a Protection visa application. |
| 8 November 2013 | DIBP deemed the Protection visa application invalid as Master X was subject to the bar under s 46A. |

¹ Master X was previously reported on in a group report of people who arrived on SIEV 463 *Rankin*.

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.

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| 16 June 2015 | The Minister lifted the bar under s 46A to allow him to lodge a temporary visa application. |
| 10 September 2015 | Master X lodged a Safe Haven Enterprise visa (SHEV) application. |

Health and welfare

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| 14 October 2012 | International Health and Medical Services (IHMS) advised that Master X disclosed a history of torture and trauma but declined specialist counselling. He was advised to self-refer as required. |
| 7 January 2013 | Master X was reviewed by a psychiatrist and diagnosed with depression after presenting with anxiety, sadness and sleep concerns. He was referred for counselling. |
| 14 February 2013 and 18 March 2013 | Attended two specialist counselling sessions. |
| April 2013 – September 2015 | IHMS advised that Master X has not required treatment for any major physical or mental health concerns. |

Detention incidents

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| 19 January 2014 | A DIBP Incident Report recorded that Master X was allegedly assaulted by four teenagers in a public place. No further information was provided. |
| 29 September 2014 | A DIBP Incident Report recorded that Master X's aunt was allegedly abusive towards him and Master X temporarily resided with a friend from school. The case worker notified Child Protection Services, however Master X later withdrew the allegations. No further information was provided. |
| 5 December 2014 | A DIBP Incident Report recorded that Master X's case worker noted marks on his body and Master X alleged that the marks were caused by his aunt. No further information was provided. |

Other matters

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| 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. |

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| 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 Master X who arrived on SIEV <i>Rankin</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

Master X was detained on 1 October 2012 after arriving in Australia as an unaccompanied minor aged 14 aboard SIEV *Rankin* and has been held in detention for over three years.

The Ombudsman notes that DIBP considered that Master X was subject to the bar under s 46A for over two and a half years until the Minister lifted the bar on 6 June 2015 to allow Master X to apply for a temporary visa. On 10 September 2015, Master X lodged a SHEV application.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Master 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 1 October 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 Master 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.