

## 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 Master X who has remained in immigration detention for more than 30 months (two and a half years).

<b>Name</b>	Master X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1998
<b>Ombudsman ID</b>	1002954
<b>Date of DIBP's reports</b>	28 April 2015 and 22 October 2015
<b>Total days in detention</b>	913 (at date of DIBP's latest report)

### Detention history

22 April 2013	Master X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland as an unaccompanied minor aged 15 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 Darwin Airport Lodge Alternative Place of Detention (APOD).
8 May 2013	Transferred to Wickham Point APOD.
10 June 2013	Transferred to Pontville APOD.
12 September 2013	Transferred to community detention.

### Visa applications/case progression

The Department of Immigration and Border Protection (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 the Minister had not lifted the bar under s 46A.	
20 June 2013	An Age Determination Assessment confirmed that Master X was under 18 years of age.
4 December 2013	Master X received a warning from DIBP that his behaviour was in breach of community detention conditions. No further information was provided.
13 March 2014	Master X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. <sup>2</sup>

<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> 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.

12 June 2014	Master X received a warning from DIBP that his behaviour was in breach of community detention conditions. No further information was provided.
16 June 2015	Master 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 Protection visa (TPV). The Minister lifted the bar under s 46A to allow him to lodge a TPV application the same day.
30 June 2015	Master X's case was referred on a ministerial intervention submission for consideration to lift the s 46A bar to allow him to lodge a TPV or Safe Haven Enterprise visa (SHEV) application. The Minister lifted the bar under s 46A to allow him to lodge a TPV or SHEV application the same day.
9 July 2015	Master X was notified that he was eligible to receive the Primary Application Information Service (PAIS) to assist in lodging a temporary visa application.
21 August 2015	Master X accepted the PAIS assistance. DIBP advised that he was waiting to be assigned a PAIS provider.
22 October 2015	DIBP advised that Master X will not be considered for a Bridging visa while he remains a minor.

### Health and welfare

17 May 2013 – ongoing	<p>International Health and Medical Services (IHMS) advised that a deliberate attempt was allegedly made to drown Master X during his journey to Australia.</p> <p>Master X presented with symptoms of depression, including hopelessness and loneliness related to this incident. He was referred for specialist counselling and supportive group therapy and continued to be monitored by a general practitioner (GP).</p>
5 July 2013 – 11 September 2013	Master X attended nine specialist counselling sessions and disclosed that he was experiencing depression related to his immigration pathway and past trauma. His counsellor provided him with coping strategies and recommended he attend further counselling and be transferred into community detention.
August 2013	Master X was placed on a psychological care plan by a psychologist after he was identified as a suicide risk. IHMS advised that the monitoring was ceased at the end of August 2013.
October 2013	Diagnosed with depression by a GP and prescribed with antidepressant medication.
December 2013	Attended a follow-up appointment with his GP who noted that his mental health had improved. Master X advised that he had ceased his medication.
17 February 2014	Presented to his GP after injuring his left ankle while playing soccer. An x-ray identified soft tissue damage. He was prescribed with pain relief medication and his condition was monitored by his GP.

27 July 2014	Master X reinjured his left ankle during a soccer game. He was referred to a physiotherapist and advised to wear supportive strapping.
30 November 2014	Master X further injured his left ankle. He was reviewed by his GP and additional ankle support strapping was advised. IHMS advised that no further concerns have been raised.

### Detention incidents

16 August 2013	A DIBP Incident Report recorded that Master X was assaulted by another unaccompanied minor at Pontville APOD. DIBP advised that he sustained no physical injuries.
22 November 2013	A DIBP Incident Report recorded that Master X allegedly assaulted another student at school causing superficial injuries. No further information was provided.
2 June 2014	A DIBP Incident Report recorded that Master X was suspended from school for three days following an altercation with another student. No further information was provided.

### Other matters

28 July 2015	The Ombudsman's office requested information from DIBP about the circumstances of Master 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 Master 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 Master 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 Master 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**

Master X was detained on 22 April 2013 after arriving in Australia as an unaccompanied minor aged 15 aboard SIEV *Lambeth* and has remained in immigration detention for over two and a half years.

The Ombudsman notes that DIBP considered that Master X was subject to the bar under s 46A for over two years until the Minister lifted the bar on 16 June 2015 to allow Master 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 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 22 April 2013. If this is the case, it would appear that Master X was wrongfully prevented from applying for a temporary visa for over two years.

The Ombudsman recommends that immediate 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 ever been subject to the s 46A bar.