

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 a cumulative period of more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1987
Ombudsman ID	1003408
Date of DIBP's report	15 September 2015
Total days in detention	734 (at date of DIBP's report)

Detention history

9 September 2012	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) 440 <i>Uvaursi</i> , indicating that he arrived as a 'direct entry person'. ¹ He was transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
15 September 2012	Transferred to Wickham Point Immigration Detention Centre (IDC).
21 November 2012	Transferred to Brisbane Immigration Transit Accommodation.
11 December 2012	Granted a Bridging visa without work rights and released from detention.
13 December 2013	Bridging visa was cancelled. He was re-detained under ss 192 and 189(1) and transferred to Villawood IDC.
5 April 2014	Transferred to Curtin IDC.
26 August 2014	Transferred to Yongah Hill IDC.
29 October 2015	Granted a Bridging 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 were subject to the bar under s 46A.	
11 December 2012	The former Minister intervened under s 195A. The same day, Mr X was granted a Bridging visa without work rights and released from detention.
23 August 2013	Lodged a Protection 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.

18 September 2013	Issued with a Notice of Visa Conditions that specifically outlined he must not engage in criminal conduct.
7 November 2013	DIBP advised Mr X that his Protection visa application was not a valid application as he was subject to the bar under s 91K.
13 December 2013	Issued with a Notice of Intention to Consider Cancellation (NOICC) under s 116 following charges for driving offences. Mr X's Bridging visa was cancelled the same day and he was re-detained. DIBP advised that Mr X appealed the decision to cancel his Bridging visa to the Migration Review Tribunal (MRT) (date not provided).
29 January 2014	MRT made a 'no jurisdiction' determination.
12 March 2014	DIBP notified Mr X of the unintentional release of personal information ² and advised that the privacy breach would be taken into account when considering his protection claims.
13 August 2015	The Minister intervened to lift the bar under s 46A.
4 September 2015	DIBP invited Mr X to lodge a temporary visa application.
24 September 2015	Lodged a Temporary Protection visa application.
29 October 2015	Granted a Bridging visa.

Health and welfare

10 September 2012	International Health and Medical Services (IHMS) reported that Mr X's induction chest x-ray identified abnormalities consistent with a prior infection. A tuberculosis skin test returned negative and he was monitored. In July 2014 a follow-up x-ray identified no abnormalities.
1 October 2012	A DIBP Incident Report recorded that Mr X allegedly refused food and fluid for three days.
1 October 2012	Admitted to hospital following abdominal pains and vomiting. He was diagnosed with hepatitis A. IHMS advised that regular liver function tests had reported improvements and no concerns had been raised.
13 December 2013 – 21 August 2015	IHMS advised that on the day he was re-detained Mr X was taken to hospital with chest pain which was assessed to be related to anxiety. He was discharged with no follow up required. IHMS further advised that Mr X had become distrustful of the mental health team following his return to restricted detention and declined to attend follow-up appointments. He attended scheduled mental health assessments and IHMS commented that he displayed symptoms of distress and anxiety but he denied intent to harm himself or others as his partner and child living in the community were strong protective factors.

² 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

11 May 2013	Mr X was charged by Queensland Police with driving offences.
4 June 2013	He was fined and disqualified from driving for three months.
14 May 2014	<p>Mr X lodged a complaint with the Ombudsman's office about the cancellation of his Bridging visa following his driving offence. He alleged that he was not advised of his review rights in a timely manner and stated that he was dissatisfied with his case manager's response to his complaint.</p> <p>Following an investigation, the Ombudsman's office was satisfied that Mr X was adequately advised of his rights of review. The complaint was finalised on 20 February 2015.</p>
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>Uvaursi</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	<p>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.</p>

Ombudsman assessment/recommendation

Mr X was granted a Bridging visa on 29 October 2015 and released from immigration detention.

Mr X was detained on 9 September 2012 arriving in Australia aboard SIEV *Uvaursi* and was held in restricted detention for a cumulative period of over two years before being granted a second Bridging visa.

The Ombudsman notes that DIBP considered that Mr X was subject to the bar under s 46A for more than two 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 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 9 September 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.