

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 remained in immigration detention for more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1996
Ombudsman ID	1002955
Date of DIBP's report	28 April 2015
Total days in detention	Not provided

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 as an unaccompanied minor aged 16 aboard Suspected Illegal Entry Vessel (SIEV) 662 <i>Lambeth</i> , indicating that he arrived as a 'direct entry person'. ¹ He was transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
3 May 2013	Transferred to Pontville APOD.
12 September 2013	Transferred to community detention.
14 February 2014	Transferred to Brisbane Immigration Transit Accommodation (ITA) following an incident in community detention.
20 February 2014	Transferred to Bladin APOD.
6 March 2014	Transferred to Wickham Point APOD.
13 August 2014	Transferred to Bladin APOD.
17 December 2014	Transferred to Wickham Point Immigration Detention Centre.
9 January 2015	Transferred to Wickham Point APOD. ²
9 October 2015	Granted a Bridging visa and released from detention.

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

Visa applications/case progression

<p>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.</p>	
30 January 2014	Mr X's case was referred on a ministerial intervention submission under s 197AB for a possible revocation of his community detention placement following an alleged incident on 18 January 2014.
13 February 2014	The former Minister revoked Mr X's community detention placement and he was transferred to Brisbane ITA.
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.
29 September 2015	The Minister lifted the bar under s 46A to allow him to lodge a temporary visa application.
9 October 2015	Granted a Bridging visa.

Health and welfare

15 May 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined specialist counselling.
12 August 2014	Mr X was transferred from Wickham Point APOD to Bladin APOD following mental health concerns, including low mood and isolative behaviour. Mr X attended weekly reviews with the mental health team and improvements in his mental health was noted. IHMS advised that Mr X declined to attend a follow-up appointment with a psychiatrist.
6 November 2013	A DIBP Incident Report recorded that he was admitted to hospital following abdominal pain. He was discharged the same day and no treatment was required.
8 April 2015	Presented to a general practitioner (GP) with reduced appetite. IHMS advised that no mental health concerns were identified and prior to his release from detention his mental health was monitored by his GP.

Detention incidents

22 November 2013	DIBP advised that Mr X was suspended from school for four days following an alleged physical altercation with another student.
18 January 2014	A DIBP Incident Report recorded that Mr X allegedly threatened a support worker with a knife while residing in community detention. On 13 February 2014 the Minister revoked Mr X's community detention placement and he was transferred to Brisbane ITA.

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 SIEV <i>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 granted a Bridging visa on 9 October 2015 and released from immigration detention.

Mr X was detained on 22 April 2013 after arriving in Australia as an unaccompanied minor aged 16 aboard SIEV *Lambeth*, and was held in restricted detention for over two years before being granted a Bridging visa.

The Ombudsman notes that DIBP considered that Mr X was subject to the bar under s 46A for over two 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 and may have been detained for a longer period than required.

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.