

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 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1980
Ombudsman ID	1002978
Date of DIBP's report	20 July 2015 and 19 January 2016
Total days in detention	924 (at date of DIBP's latest report)

Detention history

14 April 2013	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) 648 <i>Weinem</i> , indicating that he arrived as a 'direct entry person'. ¹ He was transferred to Northern Immigration Detention Centre (IDC), Darwin.
30 April 2013	Transferred to Manus Island Regional Processing Centre (RPC). ²
25 July 2013	Returned to Australia and re-detained under s 189(1). He was transferred to Curtin IDC.
26 July 2013	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point Alternative Place of Detention (APOD).

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.	
17 January 2014	Mr X requested voluntary removal from Australia.
11 March 2014	He withdrew his request for removal.
13 March 2014	DIBP notified Mr X of the unintentional release of personal information ³ and advised that the privacy breach would be taken into account when considering his protection claims.

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 Time spent at an RPC is not counted towards time spent in immigration detention in Australia for the purposes of reporting under s 486N.

³ 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.

6 August 2015	Mr X's case was referred on a ministerial submission for consideration under ss 195A and 46A.
1 October 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application. On the same day, the Minister declined to intervene under s 195A.
16 November 2015	Mr X requested voluntary removal from Australia.
18 November 2015	He withdrew his request for removal.
19 January 2016	DIBP advised that Mr X has not yet been invited to apply for a temporary visa.
10 March 2016	DIBP confirmed that detainees who arrived in Australia prior to 19 July 2013 who were transferred to an RPC and subsequently returned to immigration detention in Australia are subject to an additional bar under s 46B. DIBP further advised that these people cannot have the s 46B bar lifted to allow them to apply for a temporary visa until a legislative instrument is introduced to bring them within the 'fast track' protection assessment process.

Health and welfare

22 April 2013 – ongoing	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined specialist counselling. IHMS reported that he attended supportive counselling and was advised to self-refer to the mental health team as required.
24 December 2014	Referred for an ultrasound after he presented to the general practitioner (GP) with a lump behind his knee.
28 January 2015	An ultrasound identified a cyst. The GP noted that no further treatment was required and Mr X was advised to represent if his symptoms increased.

Other matters

2 February 2012	DIBP advised that Mr X claimed asylum in Country B.
26 March 2012	He was convicted and charged with the production of illicit drugs in Country B and received a custodial sentence of two years and six months.
26 June 2012	Mr X's asylum claim in Country B was withdrawn.
27 September 2012	He was returned to Country A by Country B authorities.
28 July 2015	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. The Ombudsman's office also identified that there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i> .

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 <i>SIEV Lambeth</i>.</p> <p>The Ombudsman's office also identified that there may be more arrivals, including Mr X who arrived on <i>SIEV Weinem</i>, who arrived in similar circumstances to those of <i>SIEV 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 <i>SIEV 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 <i>SIEV 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 14 April 2013 after arriving in Australia aboard SIEV *Weinem* and has been held in restricted detention for a cumulative period of more than two and a half 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 years until the Minister lifted the bar on 1 October 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 14 April 2013.

Following the s 46A bar lift in October 2015, on 19 January 2016 Mr X had not yet been invited to apply for a temporary visa due to being subject to an additional bar under s 46B, resulting from the time he spent in an RPC before being transferred back to Australia. DIBP has advised that until a new instrument is introduced to lift this bar, Mr X will not be invited to apply for protection.

The Ombudsman notes the apparent anomaly of the inclusion of Mr X on a ministerial submission to lift the bar under s 46A when he remains subject to an additional bar under s 46B and cannot be invited to apply for protection until the s 46B bar is lifted.

The Ombudsman further 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.