

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

The first report 1002663 was tabled in Parliament on 14 September 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A
Year of birth	1981
Ombudsman ID	1003149
Date of DIBP's reports	5 August 2015 and 5 February 2016
Total days in detention	1,095 (at date of DIBP's latest report)

Detention history

5 February 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) 582 <i>Infinity</i> , indicating that he arrived as a 'direct entry person'. ¹ He was transferred to Northern Immigration Detention Centre (IDC), Darwin. ²
16 February 2013	Transferred to Wickham Point IDC.
17 April 2013	Transferred to Scherger IDC.
25 January 2014	Transferred to Curtin IDC.
28 August 2014	Transferred to Facility B.

Recent 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.	
12 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 Mr X's detention placement history was not provided in his 24-month report.

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.

30 March 2015	Mr X's case was identified for assessment against the guidelines under s 195A for a possible referral to the Minister for the grant of a Bridging visa.
23 August 2015	Mr X's case was referred on a ministerial submission for consideration under s 46A to lift the bar.
25 August 2015	The Minister lifted the bar under s 46A to allow him to lodge a temporary visa application.
28 August 2015	DIBP invited Mr X to lodge a temporary visa application.
8 October 2015	Lodged a Safe Haven Enterprise Visa (SHEV) application.
16 December 2015	Attended an interview in relation to his SHEV application.
27 January 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of Bridging visa.

Health and welfare

International Health and Medical Services advised that Mr X has not required treatment for any major physical health issues since its previous report to the Ombudsman.	
July 2015	During a mental health assessment, Mr X expressed frustration related to his visa progression but reported that he maintains his mental health by participating in activities. He was advised to self-refer to the mental health team as required.
13 January 2016	Attended a routine mental health assessment. No further information was provided.

Other matters

DIBP advised that Mr X disclosed, and subsequently retracted, serious foreign criminal charges during his entry interview (date not provided). To support his retraction Mr X provided DIBP with a police clearance certificate from Country A. On 27 January 2015 DIBP concluded that the validity of the police certificate was inconclusive and further investigation was required.	
2 October 2013	<p>Mr X lodged a complaint with the Australian Human Rights Commission (AHRC) in relation to his ongoing detention. DIBP was notified of the complaint on 30 October 2013 and provided their response on 27 November 2013.</p> <p>On 6 December 2013, the AHRC requested that DIBP provide further information in relation to Mr X's case. On 13 January 2014 DIBP provided this information.</p> <p>On 11 February 2014, the AHRC advised DIBP that it had referred Mr X's complaint to the Inspector-General of Intelligence and Security and had concluded its inquiry.</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>Infinity</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

Mr X was detained on 5 February 2013 after arriving in Australia aboard SIEV *Infinity* and has been held in restricted detention for over three years.

The Ombudsman notes that DIBP considered that Mr X was subject to the bar under s 46A for more than two and a half years until the Minister lifted the bar on 25 August 2015 to allow Mr X to apply for a temporary visa. On 8 October 2015 Mr 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 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 5 February 2013.

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.