

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 1002937 was tabled in Parliament on 21 October 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	1988
Ombudsman ID	1003485
Date of DIBP's report	7 October 2015 and 6 April 2016
Total days in detention	1094 (at date of DIBP's latest report)

Detention history

8 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) 643 <i>Ranchero</i> , indicating that he may have arrived as a 'direct entry person'. ¹ He was transferred to Northern Immigration Detention Centre (IDC), Darwin. ²
11 May 2013	Transferred to Wickham Point IDC.
19 May 2013	Transferred to Scherger IDC.
25 January 2014	Transferred to Curtin IDC.
22 February 2014	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.	
24 July 2013	Mr X was considered to be a person of interest following DIBP receiving allegations of criminal activity overseas.

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 DIBP's 24-month review.

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 April 2014	DIBP advised that Mr X was no longer considered a person of interest.
24 March 2015	Found to meet the guidelines for referral to the Minister under s 195A.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
6 November 2015	DIBP invited Mr X to apply for a temporary visa.
18 November 2015	Mr X requested an extension of time to lodge his application for a temporary visa.
15 December 2015	DIBP granted Mr X an extension until 14 January 2016.
27 January 2016	Mr X's case was referred on a ministerial submission under s 195A for the possible grant of a Bridging visa.
22 February 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a temporary visa application. He accepted the offer on 29 February 2016.
2 March 2016	The Minister declined to intervene under s 195A.
6 April 2016	DIBP advised that it is yet to assign Mr X a PAIS provider.

Health and welfare

International Health and Medical Services (IHMS) provided details of Mr X's health and welfare. No significant ongoing physical or mental health concerns were noted.	
15 December 2015	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest. IHMS advised that he was monitored until he ceased.

Other matters

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.

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.

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>Ranchero</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.
20 April 2016	DIBP provided its response to the Ombudsman's investigation.

Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Mr X advised DIBP was arranging legal assistance for him to complete an application for a Temporary Protection visa.

Mr X stated he does not like being at Wickham Point APOD because he thinks the detention staff treat him as if he and the other detainees are criminals. He also said he was much happier at Yongah Hill IDC and was able to attend church every week but at Wickham Point APOD he can only attend once a month.

Mr X advised people from his church visit him once or twice a week. He said he has no family in Australia and his family in Country A do not want anything to do with him after he converted to Christianity.

Ombudsman assessment

Mr X was detained on 8 April 2013 after arriving in Australia aboard SIEV *Ranchero* 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 three years until the Minister lifted the bar on 29 September 2015 to allow Mr X to apply for a temporary visa. On 29 February 2016 Mr X accepted the PAIS assistance and at the time of DIBP's latest review, was awaiting to be assigned a provider to assist with lodging his 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 and detention on the Australian mainland as an apparent 'direct entry person' on 8 April 2013.

The Ombudsman notes that DIBP has commenced an internal investigation into the issues raised by the Ombudsman's own motion investigation and provided a response to some of the issues on 20 April 2016. The Ombudsman is considering DIBP's response and makes no recommendations in this report.