

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 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	1985
Ombudsman ID	1002579
Date of DIBP's reports	3 June 2015 and 24 November 2015
Total days in detention	912 (at date of DIBP's latest report)

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 aboard Suspected Illegal Entry Vessel (SIEV) 662 <i>Lambeth</i> , indicating that he arrived as a 'direct entry person'. ¹ He was transferred to Northern Immigration Detention Centre (IDC), Darwin.
10 May 2013	Mr X absconded from Northern IDC. He was located the following day and re-detained under s 189(1).
22 June 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.
25 January 2014	Transferred to Christmas Island IDC.
30 June 2014	Transferred to Perth IDC.
22 July 2015	Transferred to Christmas Island IDC.
16 October 2015	Transferred to Yongah Hill IDC.
26 November 2015	Granted a Bridging visa and released from detention.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that Mr X is part of a cohort who have not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister has not lifted the bar under s 46A.

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.

13 March 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ³
11 November 2015	DIBP confirmed that detainees transferred to an RPC who have been 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 new regulation is introduced which will bring them within the 'fast track' definition to have their protection claims assessed. Mr X was referred on a ministerial intervention submission for consideration under s 195A for the grant of a Bridging visa.
26 November 2015	Granted a Bridging visa.

Health and welfare

23 April 2013	International Health and Medical Services (IHMS) advised that Mr X was diagnosed with hepatitis B following routine pathology testing. He was provided with education by his general practitioner (GP) and is currently immune.
October 2014	IHMS advised that during a mental health assessment Mr X reported that he was struggling with his prolonged detention situation. However, no significant mental health concerns were identified.
31 July 2015 – 26 November 2015	Mr X presented to his GP with ongoing shoulder pain and immobility. An ultrasound identified a tendon injury. He was prescribed with pain relief medication and referred for physiotherapy.

Detention incidents

10 May 2013	DIBP advised that Mr X absconded from Northern IDC. He was located the following day and re-detained under s 189(1).
14 July 2015	Mr X was acquitted of all charges relating to his escape after appearing before the Perth Magistrates Court and the matter was finalised.

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.

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.

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 <i>SIEV 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 <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	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> , 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 26 November 2015 and released from immigration detention.

Mr X was detained on 22 April 2013 after arriving in Australia aboard SIEV *Lambeth*, and was held in restricted detention for a cumulative period of more than two and a half years before being granted a Bridging visa.

The Ombudsman notes DIBP's advice that because Mr X spent a period of time in an RPC before being transferred back to Australia, he is subject to an additional bar under s 46B. DIBP has further advised that until a new regulation is introduced to lift this bar, Mr X will not be invited to apply for protection.

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 is still being prevented from applying for protection 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, whether he should have ever been subject to the s 46A bar and whether he should have been transferred to an RPC in 2013.