

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 Master X who has remained in immigration detention for more than 30 months (two and a half years).

The first report 1003027 was tabled in Parliament on 11 November 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Master X
Citizenship	Stateless (claimed), born in Country A
Year of birth	1997
Ombudsman ID	1003365
Date of DIBP's report	26 August 2015
Total days in detention	912 (at date of DIBP's report)

Detention history

25 February 2013	Master 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 14 aboard Suspected Illegal Entry Vessel (SIEV) <i>Xenia</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 Wickham Point APOD.
8 May 2013	Transferred to community detention.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Master 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.	
13 March 2014	DIBP notified Master X of the unintentional release of personal information. ²
24 August 2015	Master X's case was referred on a ministerial submission for consideration to lift the bar under s 46A.
25 August 2015	The Minister lifted the bar under s 46A to allow him to lodge a temporary visa application.
26 August 2015	DIBP advised that Master X is not being considered for the grant of a Bridging visa while he remains a minor.

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 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.

Health and welfare

17 June 2015	International Health and Medical Services (IHMS) advised that Master X was referred to hospital for urgent testing after he presented to a general practitioner (GP) with symptoms of tuberculosis (TB).
26 June 2015	A DIBP Incident Report recorded that Master X was admitted to a hospital as a precaution for TB testing.
27 June 2015 – 30 June 2015	TB tests returned negative results and the hospital infectious disease specialist noted that his symptoms were unlikely to be TB. He was discharged from the infectious diseases register and referred to an outpatient clinic for review.
10 August 2015	IHMS advised that there were no reported exacerbations of Master X's asthma in this reporting period. An ear, nose and throat specialist appointment and referral to an outpatient clinic remain outstanding.

Other matters

Master X arrived in Australia with his aunt and uncle, Ms Y and Mr Z. They were granted Bridging visas on 20 May 2014 and are the subjects of Ombudsman report 1003028.	
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 Master X who arrived on SIEV <i>Xenia</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

Master X was detained on 25 February 2013 after arriving in Australia as an unaccompanied minor aged 14 aboard SIEV *Xenia* and has been held in detention for over two and a half years with no processing of his protection claims.

The Ombudsman notes that DIBP considered that Master X was subject to the bar under s 46A for over two years until the Minister lifted the bar on 25 August 2015, allowing Master 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 Master X may not have been subject to the s 46A bar due to his arrival on the Australian mainland as 'direct entry person' on 25 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 Master 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.