

## 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 Master X who has remained in immigration detention for a cumulative period of more than 24 months (two years).

<b>Name</b>	Master X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1998
<b>Ombudsman ID</b>	1003403
<b>Date of DIBP's report</b>	27 August 2015
<b>Total days in detention</b>	730 (at date of DIBP's report)

### Detention history

14 April 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) 648 <i>Weinem</i> , indicating that he arrived as a 'direct entry person'. <sup>1</sup> He was transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
27 April 2013	Transferred to Northern Immigration Detention Centre (IDC).
15 May 2013	Transferred to Wickham Point APOD.
10 June 2013	Transferred to Pontville APOD.
4 September 2013	Transferred to community detention.
29 December 2013	Master X absconded from community detention.
15 May 2014	He was re-detained under s 189(1) and transferred to Melbourne Immigration Transit Accommodation.
29 May 2014	Transferred to Bladin APOD.
4 November 2014	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.	
28 April 2014	DIBP notified Master X of the unintentional release of personal information. <sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> 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.

16 June 2015	The Minister lifted the bar under s 46A to allow Master X to lodge a temporary visa application.
9 July 2015	Master X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He accepted the offer on 22 July 2015.

### Health and welfare

International Health and Medical Services (IHMS) advised that Master X has not required treatment for any major physical health issues.	
19 May 2013	IHMS advised that Master X was regularly reviewed by the mental health team and that no concerns have been raised. He was advised to self-refer as required.
31 July 2013	A DIBP Incident Report recorded that Master X threatened self-harm. No further information was provided.

### Detention incidents

29 December 2013	Master X absconded from his community detention residence and resided unlawfully in the community until 15 May 2014 when he voluntarily presented to a DIBP office. He was re-detained under s 189(1) and transferred to Melbourne ITA. No further information was provided.
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### Other matters

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>Weinem</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	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> .  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.
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 14 April 2013 after arriving in Australia as an unaccompanied minor aged 14 aboard SIEV *Weinem* and has been held in detention for a cumulative period of more than two 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 more than two years until the Minister lifted the bar on 16 June 2015 to allow 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 14 April 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.