

## 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 42 months (three and a half years).

The first report 1001957<sup>1</sup> was tabled in Parliament on 27 May 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1986
<b>Ombudsman ID</b>	1003231
<b>Date of DIBP's reports</b>	29 April 2015, 19 October 2015 and 18 April 2016
<b>Total days in detention</b>	1276 (at date of DIBP's latest report)

### Detention history

20 October 2012	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) 484 <i>Nangle</i> , indicating that he may have arrived as a 'direct entry person'. <sup>2</sup> He was transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
26 October 2012	Transferred to Wickham Point Immigration Detention Centre (IDC).
4 June 2013	Transferred to Scherger IDC.
25 January 2014	Transferred to Curtin IDC.
28 August 2014	Transferred to Yongah Hill IDC.
24 March 2015	Transferred to Wickham Point 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.	
13 March 2014	DIBP notified Mr X of the unintentional personal release of information <sup>3</sup> and advised that the privacy breach would be taken into account when considering his protection claims.

<sup>1</sup> Mr X was previously reported on in a group report of people who arrived on SIEV 484 *Nangle*.

<sup>2</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>3</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.

13 August 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
3 September 2015	DIBP invited Mr X to lodge an application for a temporary visa.
19 October 2015	DIBP advised that Mr X was previously a person of interest in relation to his alleged involvement in criminal activity overseas.
18 December 2015	Lodged a Safe Haven Enterprise visa (SHEV) application with an associated Bridging visa application.
5 February 2016	DIBP notified Mr X that the associated Bridging visa application was invalid.
22 February 2016	DIBP notified Mr X that he was eligible to receive the Primary Application Information Service (PAIS) and advised should he accept the offer, he would be invited to lodge a new application or provide further information for his existing SHEV application.
29 February 2016	Mr X accepted the PAIS offer and was assigned a provider.
18 April 2016	DIBP advised that Mr X's case has been identified for assessment against the guidelines under s 195A for the possible grant of a Bridging visa.

#### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X was identified as a hepatitis B carrier at induction and in August 2015 when he was reviewed at an infectious disease clinic it was identified that he has a heart murmur. Mr X has been receiving treatment and regular reviews for both conditions. He has also been treated for high blood pressure and cholesterol.</p> <p>Mr X disclosed a history of torture and trauma in March 2014 but declined specialist counselling. IHMS advised that he has attended group therapy sessions for support and regular mental health reviews. A psychiatrist noted that Mr X had developed strategies to cope with his post-traumatic stress disorder symptoms and did not require further management. He was advised to self-refer to the mental health team as needed and he continued to attend therapy sessions.</p>	
5 March 2013	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.
15 December 2015 – 23 December 2015	<p>A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.</p> <p>IHMS advised that Mr X continued to refuse food and fluid for eight days. He was closely monitored and reviewed as per protocols until he resumed eating on 23 December 2015.</p>

## 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 Mr X who arrived on SIEV <i>Nangle</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.
23 June 2016	DIBP provided its response to the Ombudsman's own motion investigation.
24 June 2016	The Ombudsman's office requested further information.

### **Information provided by Mr X**

During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Mr X advised he lodged a SHEV application three months ago but had not yet met his assigned lawyer.

Mr X said when he arrived in Australia he did not have any health problems but his health has now deteriorated and he is under a lot of stress.

Mr X said he regularly sees IHMS and has been prescribed with antidepressant medication. He said the detention environment and not having any information about his case makes his situation very difficult.

Mr X advised he would like an outcome on his visa application so he can be released from detention and get on with his life.

### **Ombudsman assessment**

Mr X was detained on 20 October 2012 after arriving in Australia aboard SIEV *Nangle* 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 13 August 2015 to allow Mr X to apply for a temporary visa. On 29 February 2016 Mr X accepted the PAIS assistance and was 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 20 October 2012.

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 and the remainder of the issues on 23 June 2016. The Ombudsman has requested further information and makes no recommendations in this report.