

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 has 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	1991
Ombudsman ID	1002924
Date of DIBP's reports	16 July 2015 and 6 January 2016
Total days in detention	914 (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.
11 May 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.
27 January 2014	Transferred to Christmas Island IDC.
9 October 2015	Transferred to Wickham Point Alternative Place of Detention (APOD). ³

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 had 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.

³ DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X is accommodated in the single adult male compound at Wickham Point APOD.

12 March 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ⁴
10 March 2016	DIBP confirmed that detainees who arrived in Australia prior to 19 July 2013 who were transferred to an RPC and subsequently 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 legislative instrument is introduced to bring them within the 'fast track' protection assessment process.

Criminal matters

5 September 2014	A DIBP Incident Report recorded that Mr X was involved in a physical altercation with detainees of a different ethnicity at Christmas Island IDC.
27 November 2014	Mr X was charged with participating in a riot following the incident at Christmas Island IDC.
10 December 2014	Mr X attended a hearing at the Christmas Island Magistrates Court.
12 May 2015	Appeared before the Perth Magistrates Court and the matter was adjourned.
6 January 2016	DIBP advised that Mr X is scheduled to appear before the Perth Magistrates Court in May 2016.

Health and welfare

International Health and Medical Services advised that Mr X has not required treatment for any major physical or mental health issues.	
October 2015	Mr X attended a routine mental health assessment and no concerns were identified. IHMS reported that Mr X appeared to be coping effectively with his ongoing detention and no symptoms of depression or anxiety were noted. Mr X advised that he is concerned about his future, however he prevents himself from becoming overwhelmed or worrying about these issues.

Other matters

28 July 2015	The Ombudsman's office requested information from DIBP about the circumstances of people who arrived on SIEV <i>Lambeth</i> and whether they should be subject to the s 46A bar, given that their arrival information indicated that they arrived on the Australian mainland as 'direct entry persons'.
30 July 2015	DIBP advised that it expected to provide clarification as soon as information had been sourced from other areas within DIBP.

⁴ 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 people who arrived in Australian waters on 17 April 2013 aboard SIEV <i>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 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>, including Mr X.</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>

Ombudsman assessment/recommendation

Mr X was detained on 22 April 2013 after arriving in Australia aboard SIEV *Lambeth*, and has been held in restricted detention for a cumulative period of more than two and a half years with no processing of his protection claims.

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 legislative instrument 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.

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, and whether he should have ever been subject to the s 46A bar.