

**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 and his family. Mr X has remained in immigration detention for more than 36 months (three years) and his family remained in immigration detention for more than 30 months (two and a half years)

The first report 1002960 was tabled in Parliament on 3 February 2016. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1976
Total days in detention	1094 (at date of DIBP's latest report)

Family details

Family members	Ms Y (wife)	Master Z (son)	Master Q (son)
Citizenship	Country A	Country A	Country A
Year of birth	1980	2003	2005
Total days in detention	912 (as at DIBP's report dated 21 October 2015)		

Ombudsman ID	1003526
Date of DIBP's reports	21 October 2015 and 20 April 2016

Detention history

22 April 2013	Mr X and his family were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 657 <i>Fowley</i> , indicating that they may have arrived as 'direct entry persons'. ¹ Mr X and his family were transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
8 May 2013	Transferred to Wickham Point APOD.
16 May 2014	Transferred to Bladin APOD.
6 November 2014	Transferred to community detention.
14 January 2016	Mr X was transferred to Brisbane Immigration Transit Accommodation after his community detention placement was revoked. The Department of Immigration and Border Protection (DIBP) advised that his wife and sons remained in community detention.

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.

20 January 2016	Mr X was transferred to Wickham Point APOD.
17 March 2016	Ms Y and their sons, Master Z, Master Q and Master R, ² were granted Bridging visas and released from detention.
20 April 2016	DIBP advised that Mr X remains at Wickham Point APOD.

Visa applications/case progression

DIBP advised that Mr X and his family are 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.	
13 March 2014	DIBP notified Mr X and his family of the unintentional release of personal information ³ and advised that the matter would be taken into account when considering the family's protection claims.
23 September 2014	The family's case was referred on a ministerial submission for consideration under s 197AB.
2 October 2014	The former Minister intervened under s 197AB to allow the family to reside in community detention.
29 September 2015	DIBP advised that a Five Country Conference check returned a match for Mr X in Country B.
30 September 2015	DIBP received information from Country B that Mr X had an undisclosed criminal conviction.
29 December 2015	The Minister revoked Mr X's community detention placement under s 197AD.

Criminal history

2 February 2010	Mr X was convicted of offences in Country B. He received a custodial sentence and on 15 November 2010 he was returned to Country A.
-----------------	---

Health and welfare

Mr X, Master Z and Master Q

International Health and Medical Services (IHMS) provided details of Mr X and his sons' health and welfare. No significant ongoing physical or mental health concerns were noted.

Ms Y

19 May 2013	Ms Y disclosed a history of torture and trauma but declined specialist counselling.
20 May 2013	She was identified to have latent tuberculosis and required monitoring as per state policy. No treatment was needed.

² Master R was born in Australia in October 2014 and has been in detention for less than two years. He is not subject to reporting under s 486N.

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.

June 2013	Her pregnancy was confirmed and she was referred for antenatal care.
22 September 2013	Ms Y was admitted to hospital for emergency treatment and gave birth to a stillborn son. IHMS advised that Ms Y and her husband were supported by the mental health team.
12 February 2014	She returned a positive pregnancy test and was referred for antenatal care. IHMS advised the level of antenatal care was increased following previous complications.
October 2014	She gave birth to her son.

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 and his family who arrived on SIEV <i>Fowley</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 2015	DIBP provided its response to the Ombudsman's own motion investigation.
24 June 2016	The Ombudsman's office requested further information.

Ombudsman assessment

Mr X and his family were detained on 22 April 2013 after arriving in Australia aboard SIEV *Fowley*. Mr X has been held in detention for over three years and his family were held in detention for over two and a half years.

The Ombudsman notes that Mr X's wife and sons, Ms Y, Master Z, Master Q and Master R were granted Bridging visas on 17 March 2016 and released from immigration detention.

The Ombudsman further notes that DIBP considers that Mr X and his family are subject to the bar under s 46A and at the time of its review, no processing of their protection claims had commenced.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Mr X and his family may not have been subject to the s 46A bar due to their arrival and detention on the Australian mainland as apparent 'direct entry persons' on 22 April 2013.

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.