

**An analysis of reports under
s 486O of the *Migration Act 1958*
sent to the Minister
by the Ombudsman in 2014/15**

Immigration Ombudsman

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Introduction

Background

The Secretary of the Department of Immigration and Border Protection is required to send to the Ombudsman a report relating to the circumstances of a person's detention for every person who has been in immigration detention for more than two years, and every six months thereafter, even if the person is no longer in detention.

The Ombudsman is then required to report to the Minister, giving an assessment of the appropriateness of the arrangements for the detention of the person, with a de-identified copy to be tabled in Parliament¹ by the Minister. Such reports may include recommendations. The Act states that the Minister is not bound by a recommendation made by the Ombudsman.

2014/15 reports

In 2015 it was decided that the Ombudsman would prepare the analysis of s 486O reports on a financial year basis rather than a calendar year basis as was done in 2013 and 2014.

This means that for the current analysis we have used data for the last six months of 2014, which was already taken into account in 2014's analysis of s 486O reports that was published on the Ombudsman's website in January 2015.

To avoid the inaccuracies that would occur if we used this data twice by comparing data from the 2014 analysis with the current 2014/15 analysis, we have not provided comparisons with the previous analysis as was done in 2014. This will be reintroduced in 2015/16.

This is an analysis of all reports sent to the Minister and tabled in Parliament in 2014/15 and draws on similar data as the analyses for 2013 and 2014 that were previously published on the Ombudsman's website.

In 2014 a total of 736 s 486O reports in the usual format for individuals and family groups were sent to the Minister and tabled in Parliament. These 736 reports cover 1096 people.

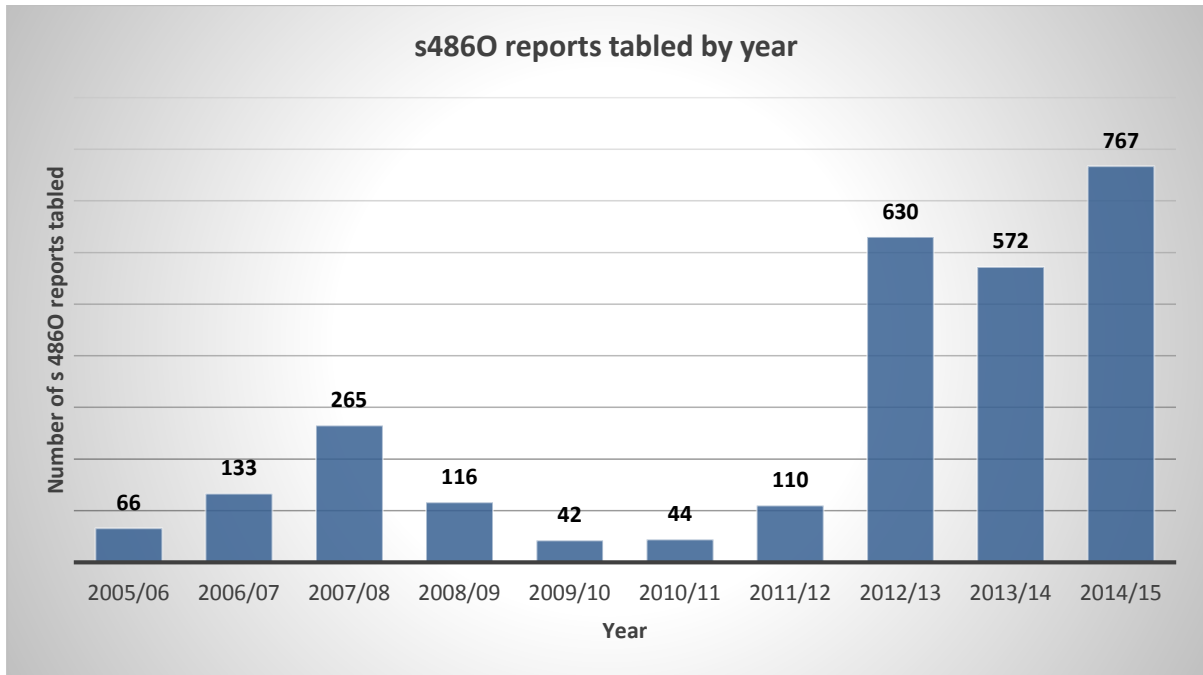
As before, this analysis looks at both the administrative processes within the Ombudsman's office in preparing these reports and the processes involved for people claiming protection in Australia. However the changes in government policy for people claiming protection meant that few of these detainees were able to lodge a valid application for a protection visa which has meant that fewer s 486N reviews from the department had details of the assessment of claims for protection and any subsequent merits review.

¹ In this analysis reports by the Ombudsman to the Minister are referred to as s 486O reports, based on the section of the Migration Act under which they are created. Likewise, reports received from the Department of Immigration and Border Protection are referred to as s 486N reviews.

The Ombudsman's s 486O reports

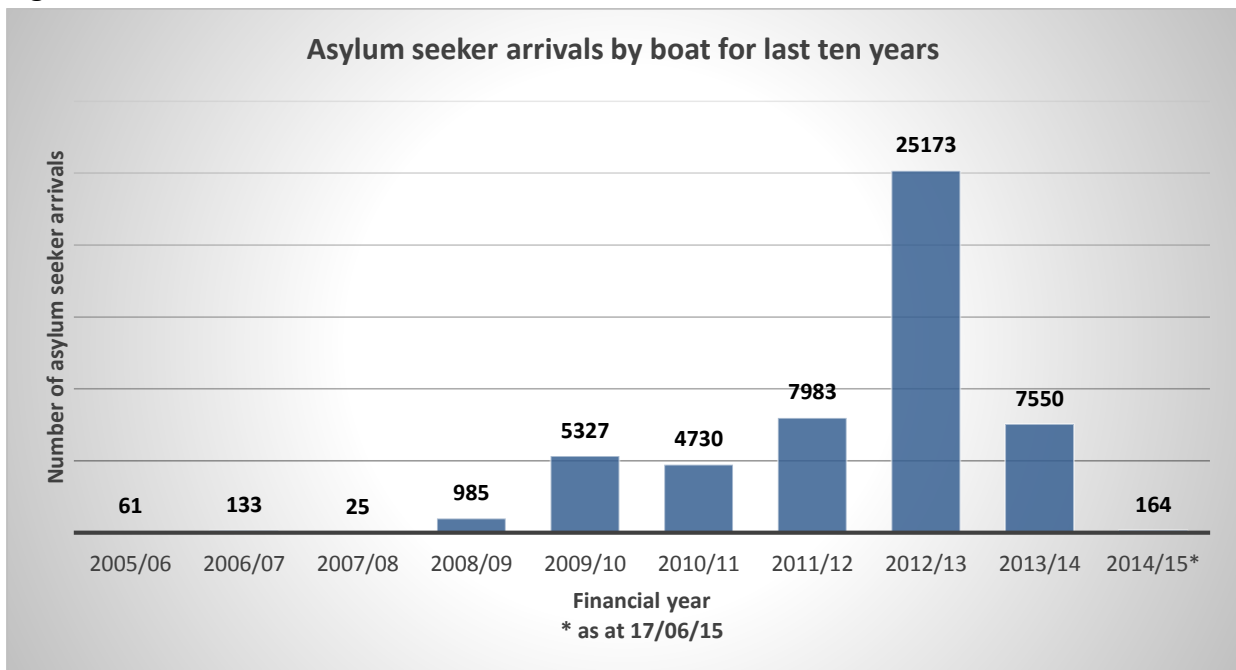
2014/15 saw the highest number of s 486O reports tabled in Parliament since the statutory reporting function commenced in December 2005. Figure 1 shows the number of s 486O reports tabled in each financial year from that date.

Fig 1



This shows a correlation with arrival of asylum seekers by boat over the same period, as shown in figure 2 where an increasing proportion of the asylum seekers who arrived between 2009/10 and 2012/13 remained in detention for more than two years.

Fig 2

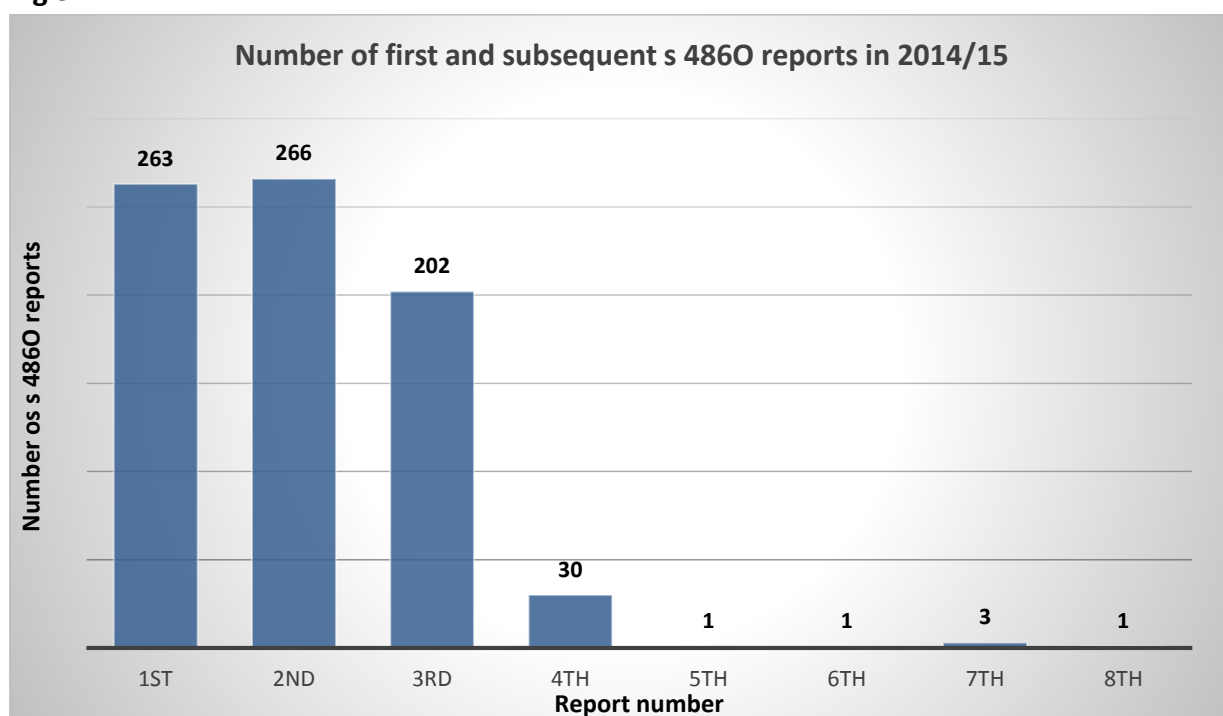


Report type – first and subsequent reports

The Ombudsman is required to report on the circumstances of a person’s detention after 24 months (first report) and every six months (subsequent report) thereafter, even if the person is released from detention.

Figure 3 shows the number of first and subsequent s 486O reports tabled in 2014/15. This shows that 95% are either first, second or third reports and is a general reflection of the time people are held in detention. Five percent of the detainees for whom reports were tabled had been in detention for four years (48 months) or more.

Fig 3



Timeliness of reports

There are four general measures of timeliness for the production of s 486O reports by the Ombudsman’s office. These are:

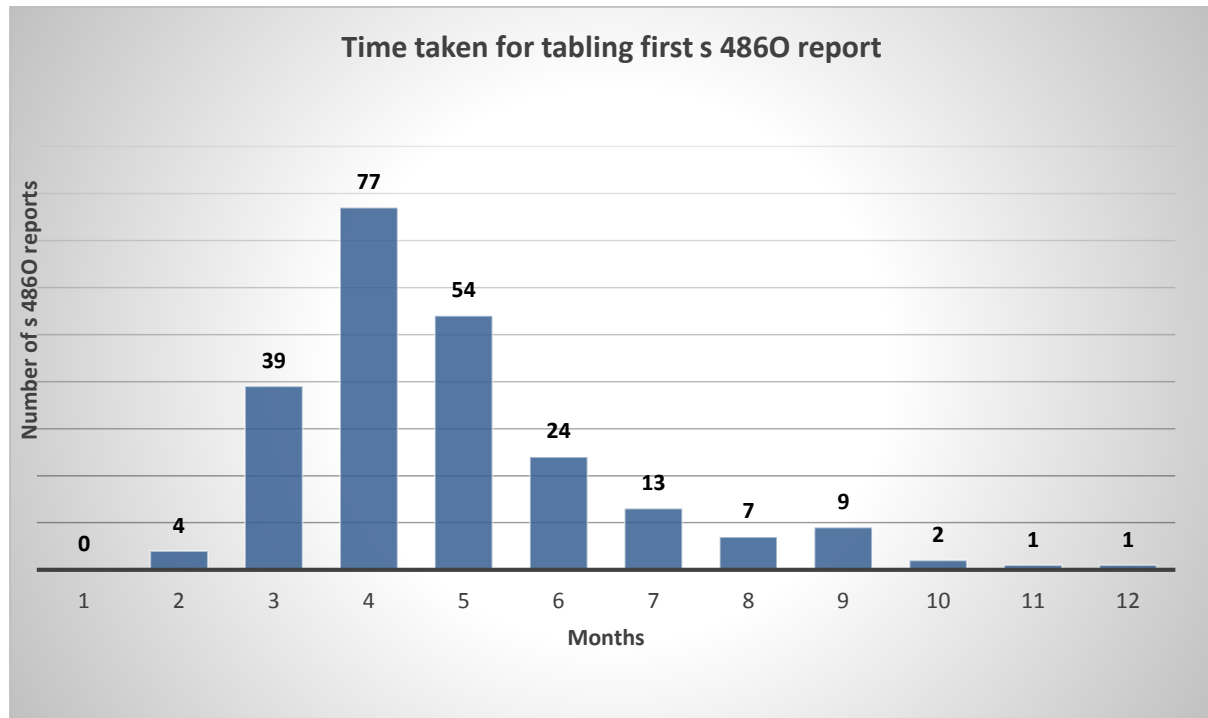
1. the interval between the receipt of the first s 486N review for a detainee and the time the first s 486O report is tabled in Parliament
2. the interval between tablings for those detainees who require subsequent s 486O reports
3. the interval between the receipt of the latest s 486N review (which may be a first or subsequent review) and the s 486O report being tabled; and
4. the number of s 486N reviews that are referenced in each s 486O report.

The Ombudsman’s office gives preference to preparing s 486O reports for people in detention, particularly restricted detention, over people who have been granted a visa and released from detention, or who have been removed from Australia.

It should be noted in relation to points 1-3 above that in some instances there can be a period of two to three months between the time a s 486O report is sent to the Minister and when it is tabled in Parliament, particularly if Parliament is in recess at the time the report is sent. As the Act requires s 486O reports to be tabled within 15 sitting days of being received by the Minister, the date of tabling and the period between tablings for subsequent reports is influenced by Parliament's sitting calendar.

Figure 4 shows how long it takes from the time the first s 486N review is received from the department to when the first s 486O report is tabled by the Minister in Parliament.

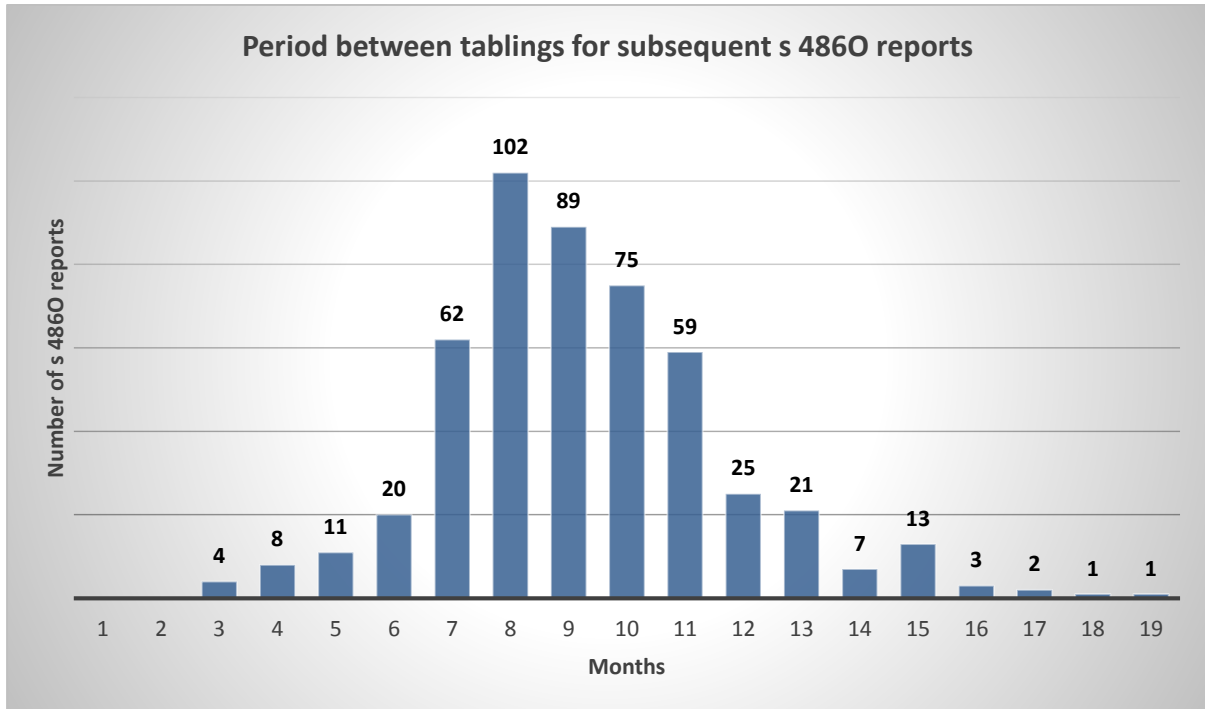
Fig 4



In 2014/15 95% of first s 486O reports were tabled within six months of the first s 486N review being received.

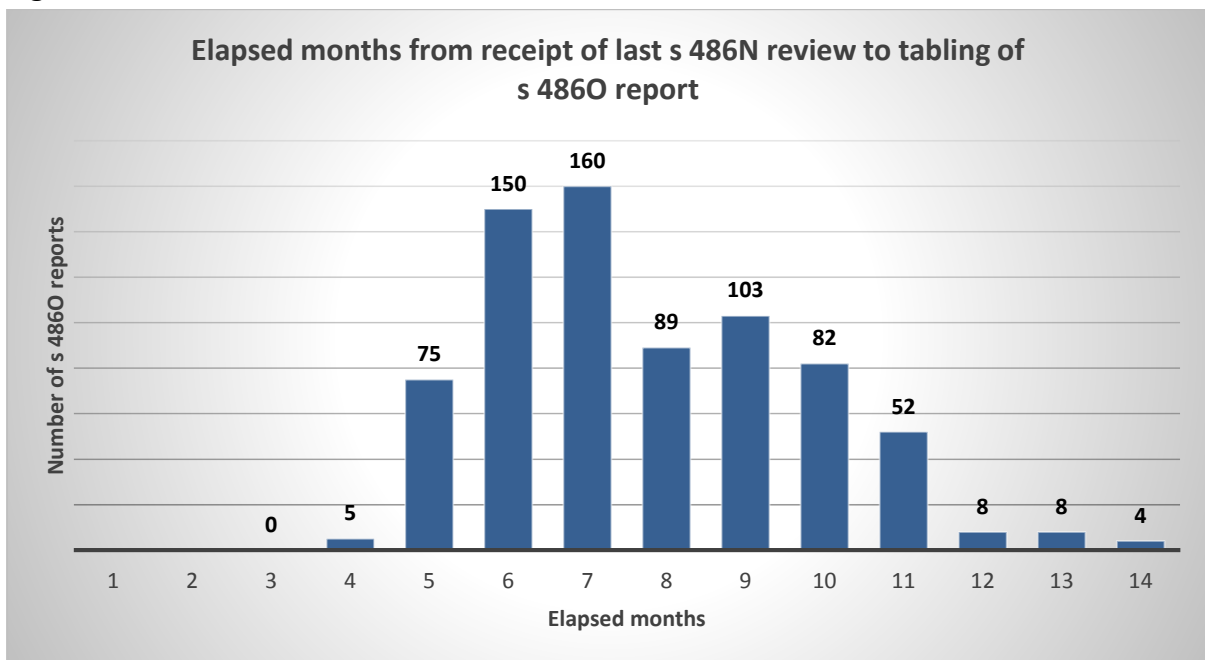
Figure 5 shows the period between tablings for subsequent s 486O reports. Eight percent were tabled in six months or less, 82% were tabled in from seven to 12 months and 10% took more than 12 months to be tabled.

Fig 5



The interval between the receipt of the most recent s 486N review (first or subsequent review) and the tabling of the s 486O report is shown in figure 6.

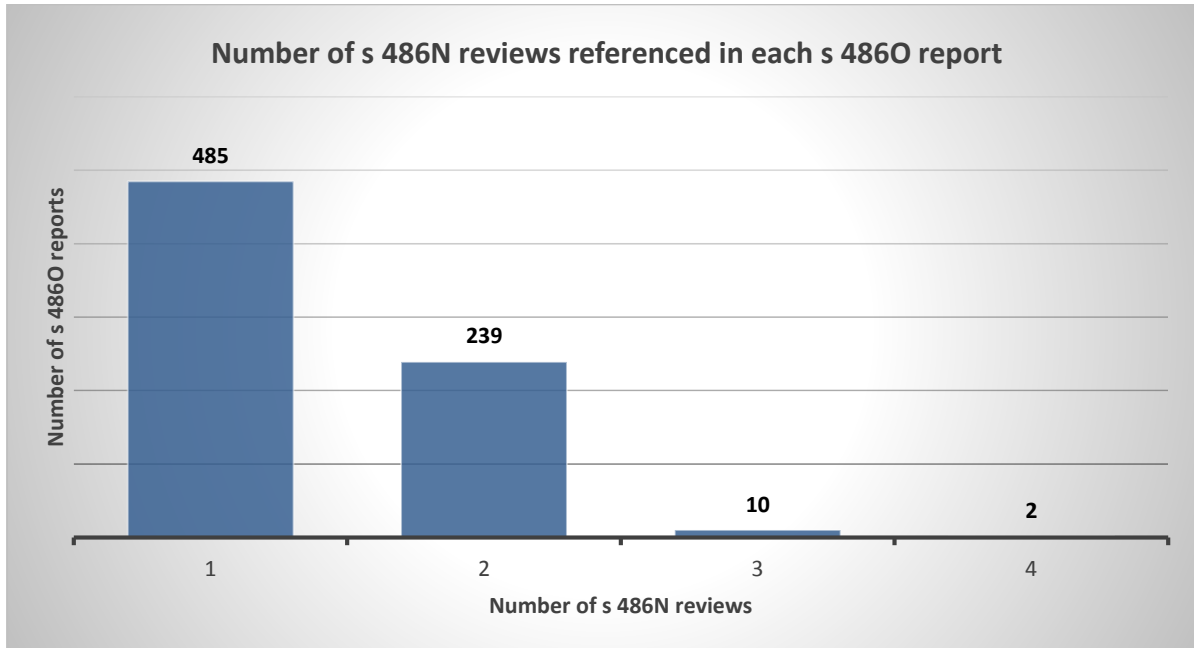
Fig 6



While the Ombudsman’s office prepares s 486O reports as soon as possible, and ideally would do so for each s 486N review received, it is not always able to do this before one or more subsequent s 486N reviews are received from the department. In such instances multiple s 486N reviews are taken into account and referenced in each s 486O report.

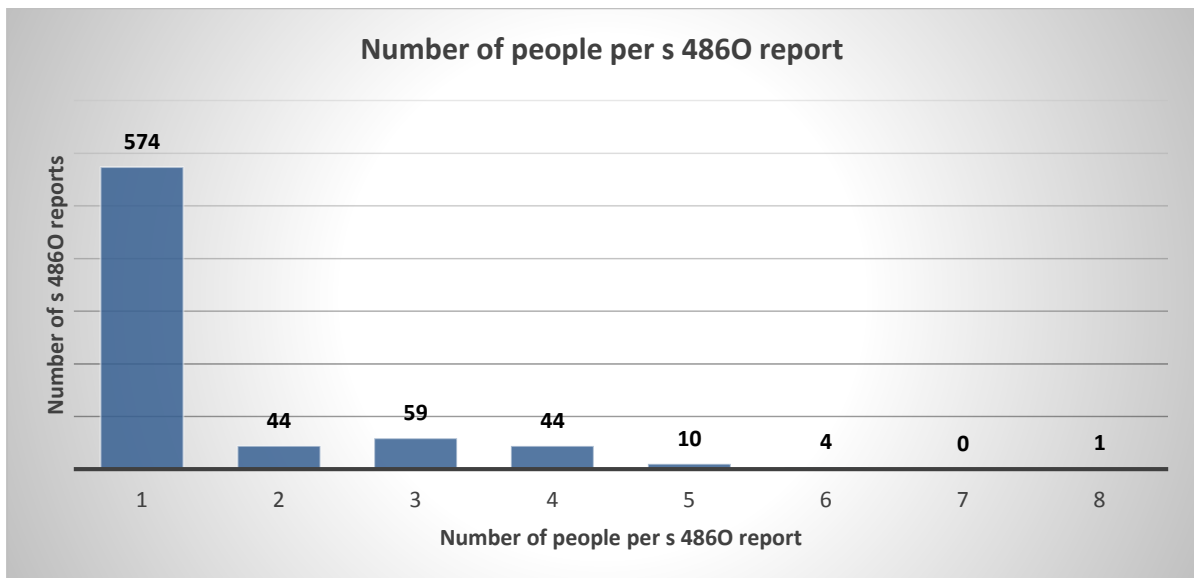
Figure 7 shows the number of s 486N reviews that are referenced in each s 486O report.

Fig 7



While the majority (78%) of s 486O reports relate to a single person, 22% of reports are for family groups of two or more people. Figure 8 shows the number of people per s 486O report.

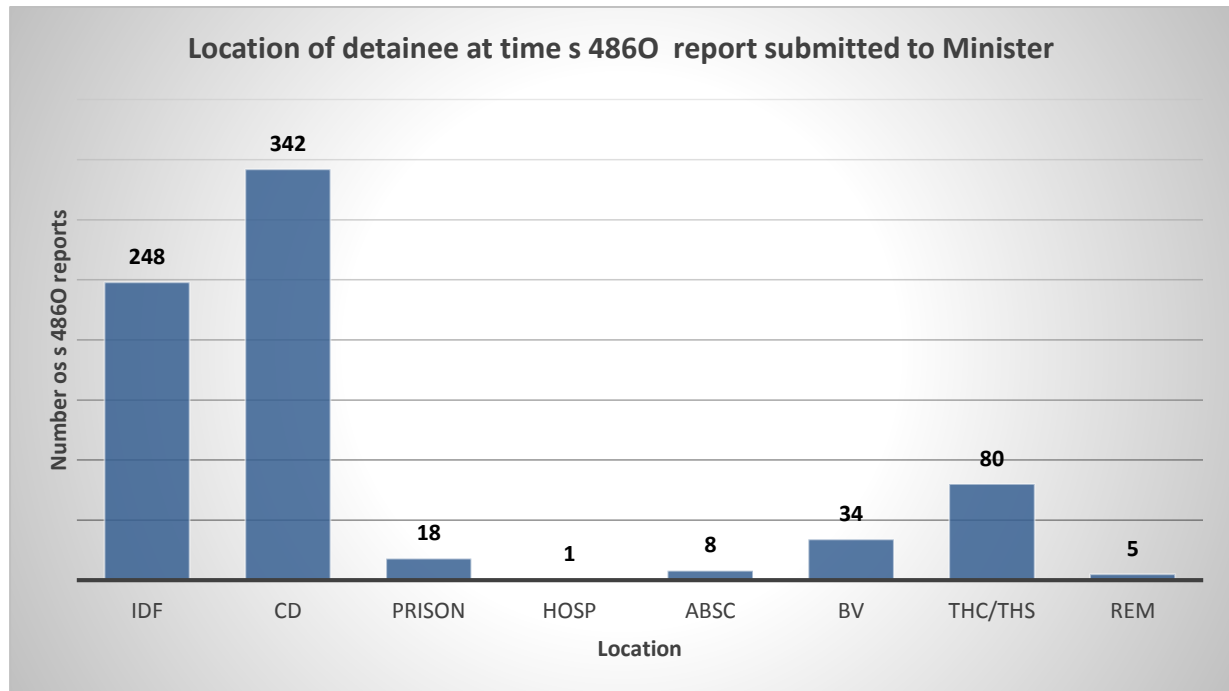
Fig 8



Location

Figure 9 shows the location of detainees at the time their s 486O report was tabled. In 2014/15 there no detainees on whom we reported who had been released from detention on a Protection visa by the time the s 486O report was sent to the Minister. This is a result of the changes to government policy. There were however 80 reports for individuals or family groups who had been released on Temporary Humanitarian Concern or Temporary Humanitarian Stay visas.

Fig 9



Legend

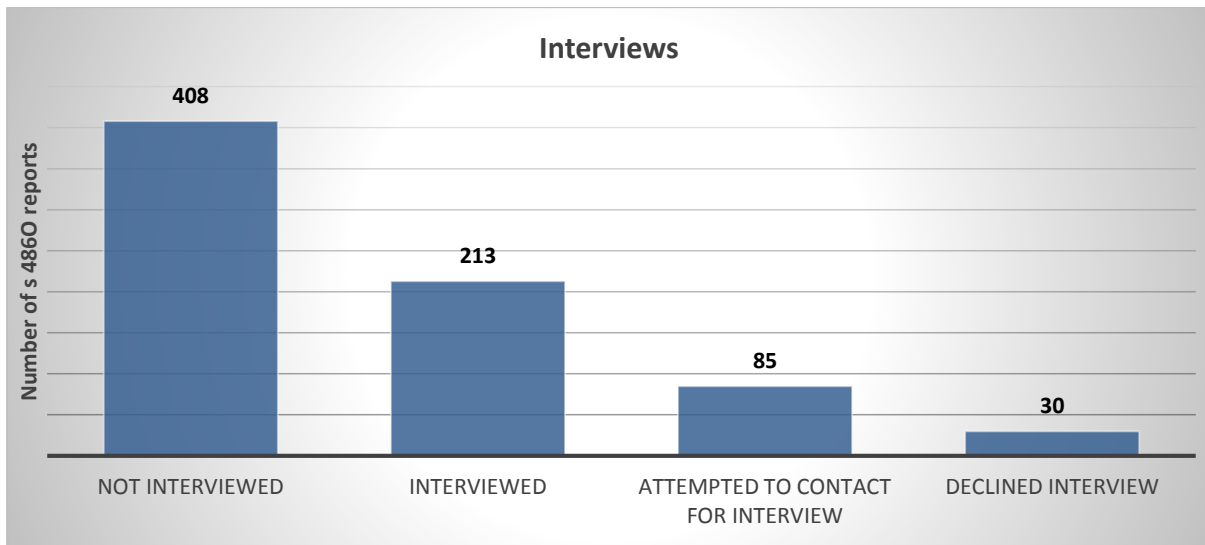
IDF	Immigration detention facility	ABSC	Absconded from detention and still at large
CD	Community detention	BV	Released on Bridging visa
PRISON	Prison	THC/THS	Released on Temporary Humanitarian Concern or Temporary Humanitarian Stay visas
HOSP	Hospital	REM	Removed from Australia (voluntarily or involuntarily)

Interviews

The Ombudsman’s office has continued its program of interviewing detainees prior to a s 486O report being prepared. As in previous years this has included visiting detention centres to conduct interviews in person and interviewing people in community detention by telephone. Interpreters are used in these interviews if the detainee requires it. Issues relating to the quality and availability of interpreters that was commented on in the previous analysis have largely been resolved.

Figure 10 shows the number of people interviewed as well as those we attempted unsuccessfully to contact and those who declined to be interviewed.

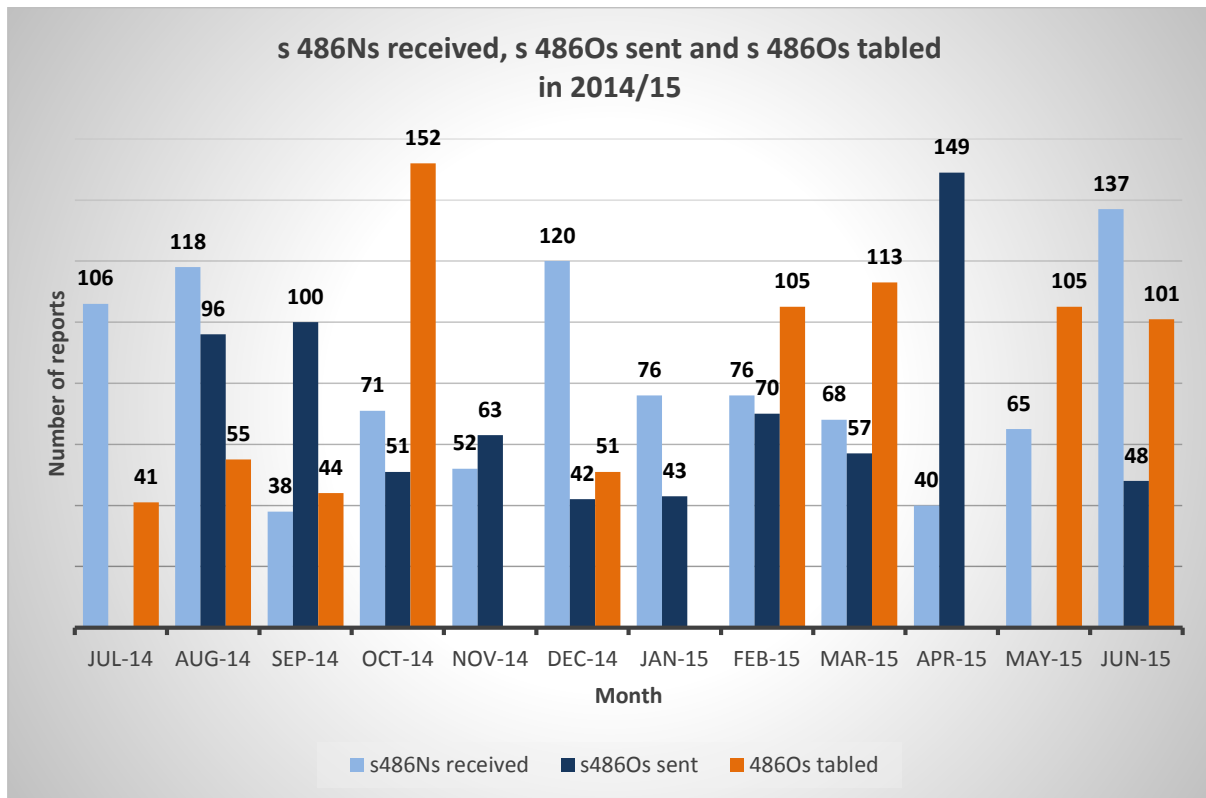
Fig 10



S 486N reviews received, s 486O reports sent and tabled

Figure 11 shows the number of s 486N reviews received from the department and the number of s 486O reports sent to the Minister, and tabled, in each month for 2014/15.

Fig 11



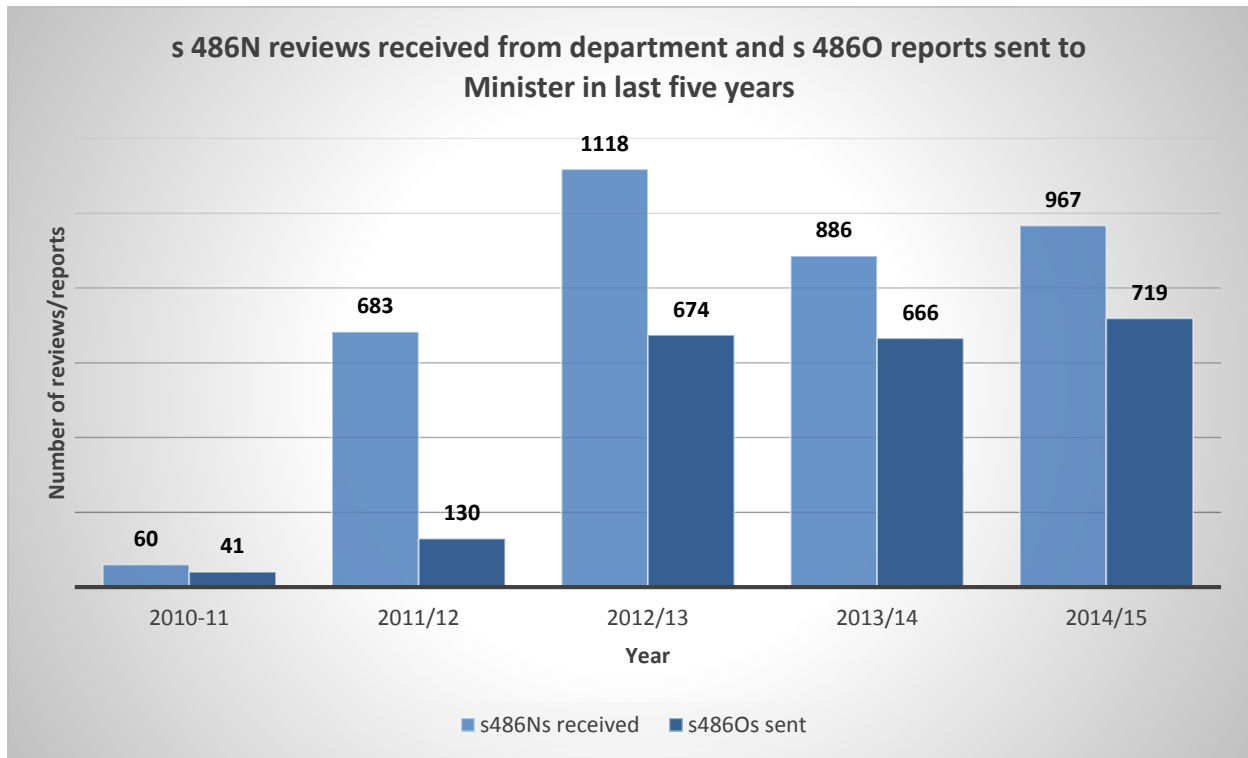
There is no precise correlation between the number of s 486N reviews received and the number of s 486O reports sent to the Minister and subsequently tabled in Parliament in any given month. As referenced in figure 6 above, very few s 486O reports are completed within four months of the s 486N review being received and the majority take at least six months.

Further, we might receive s 486N reviews for people who we are then advised have been released from detention, either on a visa or removed from Australia. These cases are given a lower priority than those for people still in detention. Further prioritisation occurs to ensure that reports for more vulnerable detainees are actioned promptly.

The differences in the number of reports sent to the Minister and the number tabled in Parliament in any given month arises from the requirement for reports to be tabled within 15 sitting days of being received and the fact that Parliament may be recess during this time.

Figure 12 shows the number of s 486N reviews received from the department and the number of s 486O reports sent to the Minister for the last five financial years. For the number of reports tabled in the same period see figure 1.

Fig 12



As noted in the analyses of 2013 and 2014, we receive more s 486N reviews than the number of s 486O reports that are submitted to the Minister. This is accounted for both by more than one s 486N review being referenced in a single s 486O report (refer to figure 7), and the balance of s 486N reviews on hand that are waiting to be actioned.

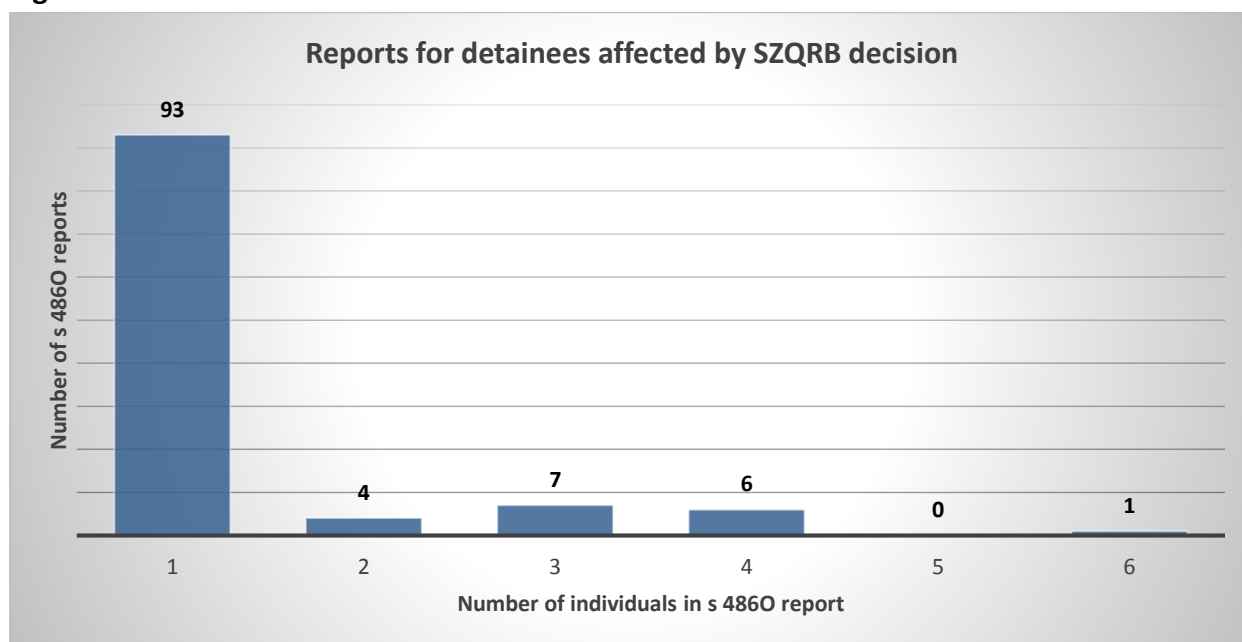
SZQRB cohort

In the 2013 and 2014 analyses of s 486O tablings reference was made to the cohort of detainees affected by the Federal Court's decision in SZQRB². These detainees have been found not to be owed protection by Australia but cannot be returned to their home country due to the circumstances that apply there and Australia's *non-refoulement* obligations. The department has commenced reassessing these cases to determine if the individuals are owed protection under the complementary protection criterion as part of a new International Treaties Obligation Assessment.

The Minister has indicated that he expects these people to return home and if they are unwilling to return home they will remain in detention until they can be involuntarily removed.

Figure 13 shows the number of s 486O reports (111 in total) prepared for people in this cohort, and the number of people (individuals or family groups) included in each report.

Fig 13



Detainees with an adverse security assessment

In the previous analysis of s 486O reports tabled in 2014 we gave details of those detainees reported on who had received an adverse security assessment. In 2014/15 the Ombudsman submitted 49 reports on such individuals, two of who had two reports tabled in the year.

In line with government policy, the Independent Reviewer of Security Assessments conducts periodic reviews of all adverse assessments. Since this function commenced a number of individuals have had their adverse assessments overturned and in 2014/15 21 were released from detention. As at 1 July 2015 there are still 25 detainees with adverse assessments in detention.

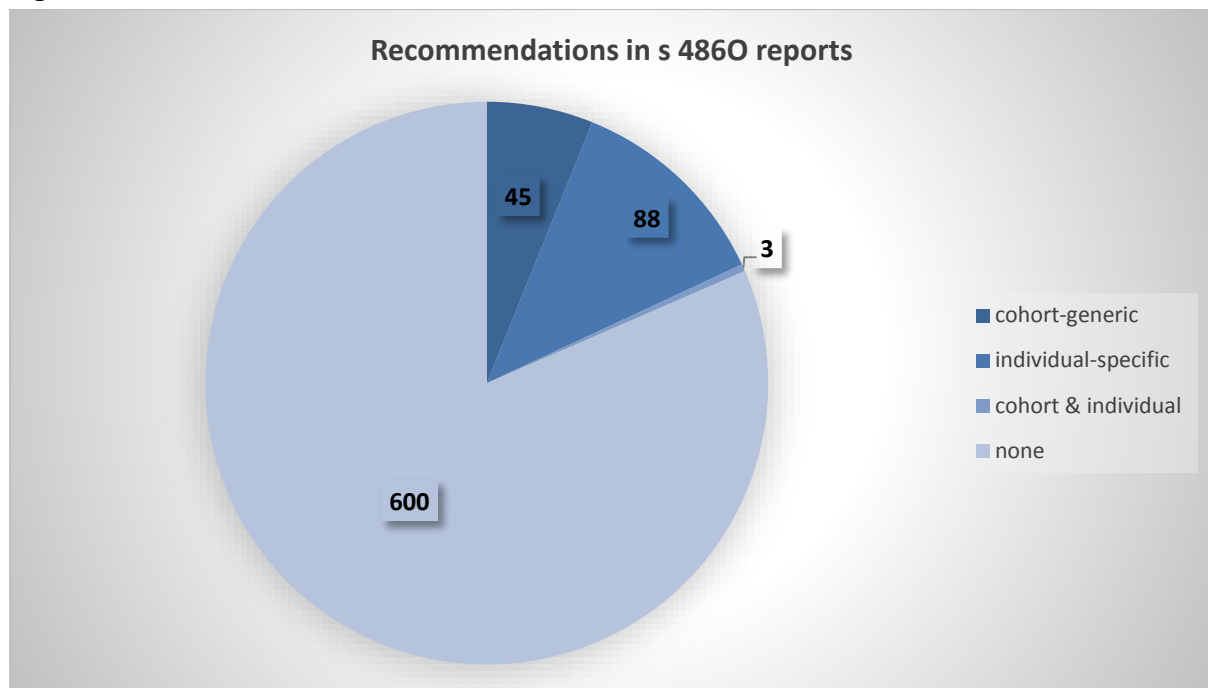
² Minister for Immigration and Citizenship v SZQRB [2013] FCAFC 33

Report recommendations

The Ombudsman may make a recommendation in an assessment, according to the powers in the Act, where he thinks there is an action that could or should be taken by the Minister or the department in relation to a specific detainee. As previously stated, the Act states that the Minister is not bound by a recommendation made by the Ombudsman.

As in 2013 and 2014, the recommendations in the reports tabled in 2014/15 fall into two broad categories; those that are specific to an individual detainee, and generic recommendations that are common to a broader cohort of detainees. Figure 14 shows the number of reports tabled in 2014 that contained recommendations.

Fig 14



Cohort-specific recommendations

The three cohorts of detainees that had generic recommendations made about the circumstances of their detention were:

- those who have been found to be refugees but have received an adverse security assessment
- those who have been found not to be refugees but who cannot be returned to their home country as they are affected by the Federal Court's decision in SZQRB, and
- those who arrived post 13 August 2012 and for who the Minister has not lifted the bar under s 46A that allows them to apply for protection.

There has been no change to the government's policy that those who have received an adverse security assessment will not be allowed to reside in the community and recommendations by the Ombudsman in this regard have been noted but not agreed to by the Minister.

For those individuals in the SZQRB cohort the Ombudsman recommended that the government give priority to resolving the legal and policy position. The Minister's response is that he expects these people to return home and the department will work with them to develop Assisted Voluntary Return packages. If they are unwilling to return home they will remain in detention until they can be involuntarily removed.

The Ombudsman has noted his concern of the risk to the physical and mental health from prolonged detention for those detainees who arrived post 13 August 2012 who are subject to possible indefinite detention. He has recommended that the Minister lift the bar under s 46A and for processing of their claims for protection to proceed as soon as possible.

Individual recommendations

The majority of recommendations made for specific individuals relate either to:

- delays in the processing of their application for protection or other visa subclass
- their placement within the detention network or into community detention
- being considered for release from detention on a Bridging or other category of visa
- medical treatment issues.

Where a specific recommendation is made for an individual, the Minister provides a response in his tabling statement that addresses the recommendation, indicating either that he accepts or rejects it, or that he has asked his department to prepare a submission in relation to the recommendation.

In those instances where a subsequent s 486N review is received for a person about whom a recommendation was made in a previous s 486O report, it is expected that the department provides a summary of the recommendation and indicates the status of the response to it.

Where a recommendation is made and the person is subsequently released from detention before a further s 486N review is due, the Ombudsman's office receives no further information in relation to the recommendation.

The asylum seeker experience

In 2014 the Ombudsman reported on 156 (25% of total reports) individuals or families in their first report that gave details of their claim for protection and the outcome. For the 2014/15 year this dropped to 108 (14% of total reports).

Protection claim

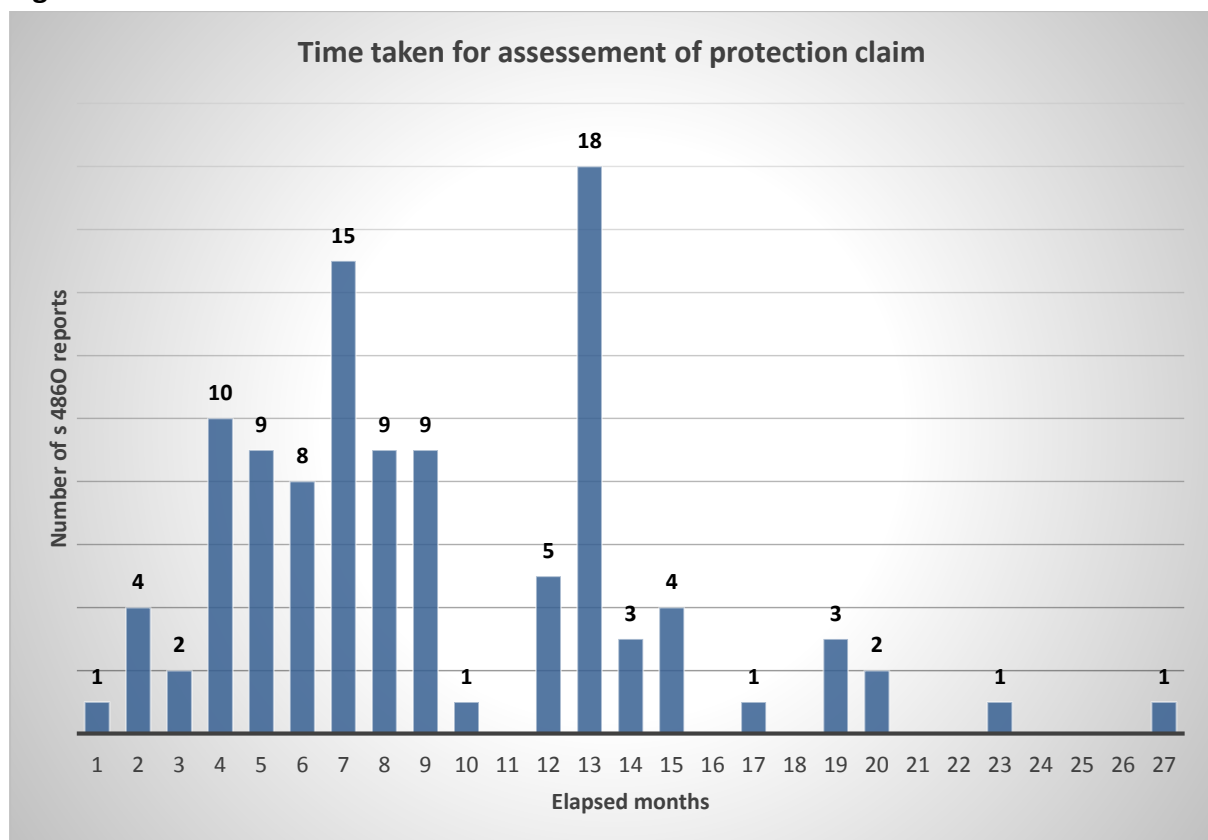
Of the 108 reports with details of a claim for protection, 101 received a negative outcome and 7 received a positive outcome. All those who received a positive outcome remained in detention at the time their s 486O report was prepared as they were unable to be granted a visa, in most instances because there was a matter before the courts or they were a person of interest to law enforcement agencies.

Processing time – claims for protection

Processing times in 2014/15 show a greater variance than previous years which reflects the changes in government policy and how this has impacted on the assessment of asylum claims. In this year 68% were processed within 12 months, and only one claim took more than two years.

Figure 15 shows the time taken for all those who claimed protection from the date of their arrival to the date their initial claim was determined.

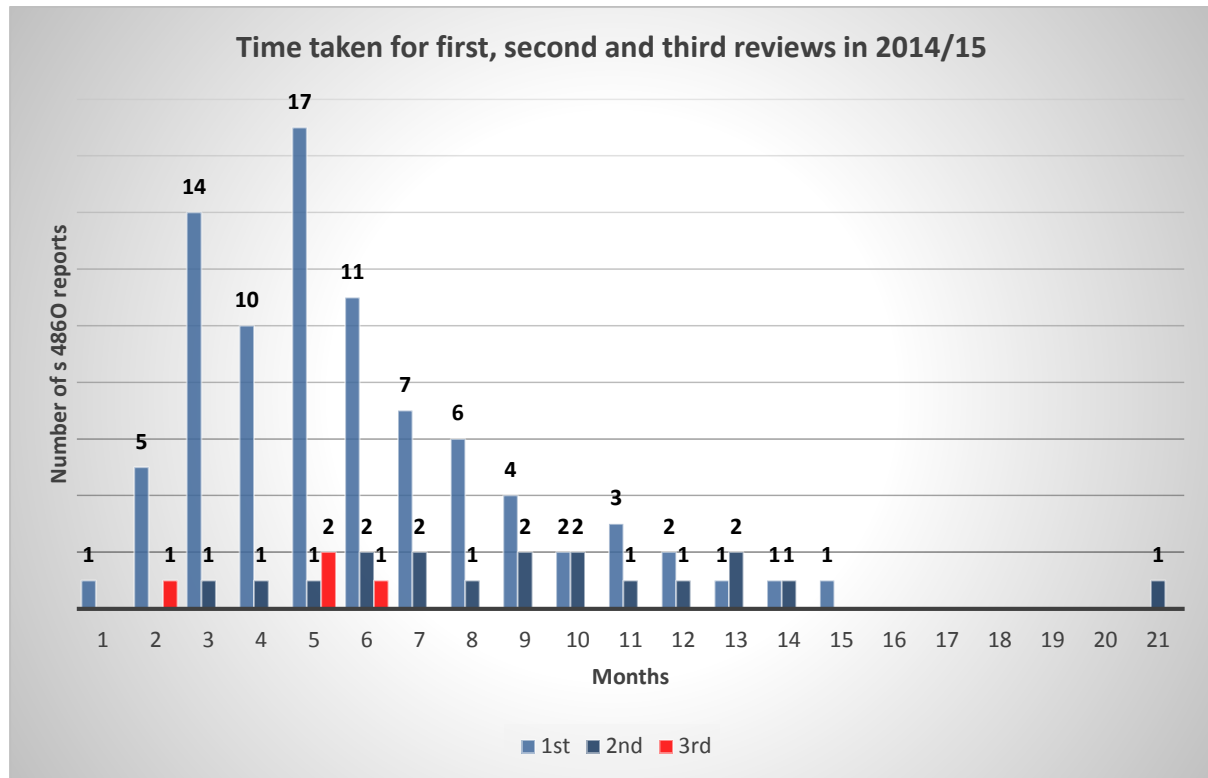
Fig 15



Review

Of the 106 detainees who received a negative outcome for their claim for protection, 84 sought an initial review. There were a further 18 second reviews and four third reviews for detainees reported on in 2014/15. Figure 16 shows the time taken for each of the three stages of review. For the first review the time taken is measured from the date of the rejection of their claim for protection to the date of the review decision. For the second and third reviews the time taken is measured from the date of the previous review decision to the date of the subsequent decision.

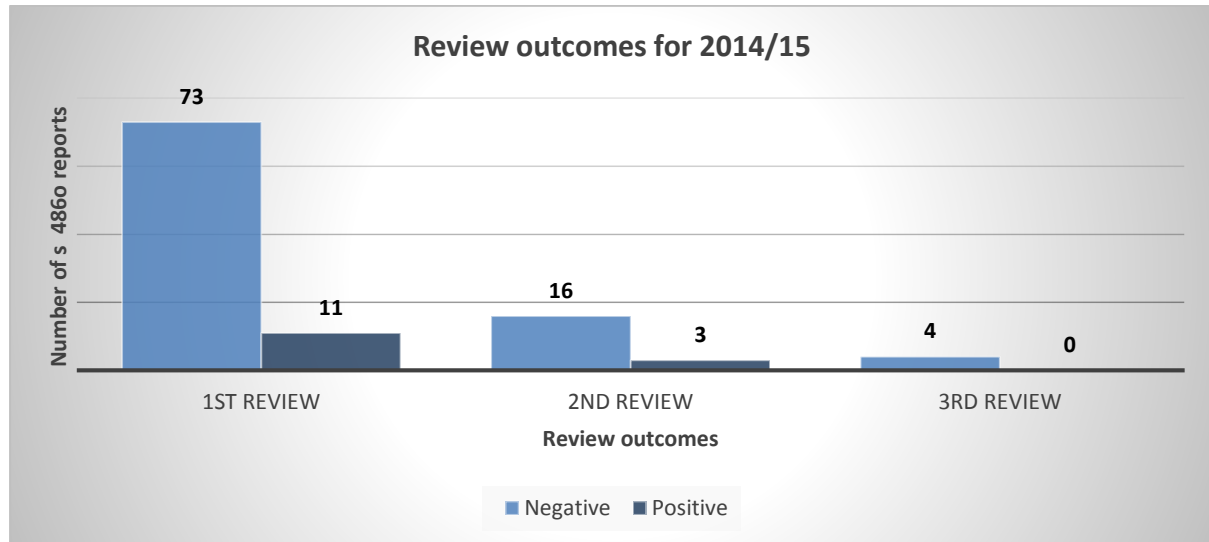
Fig 16



Review outcomes

Figure 17 shows the outcomes of the three stages of review for detainees reported on in 2014/15.

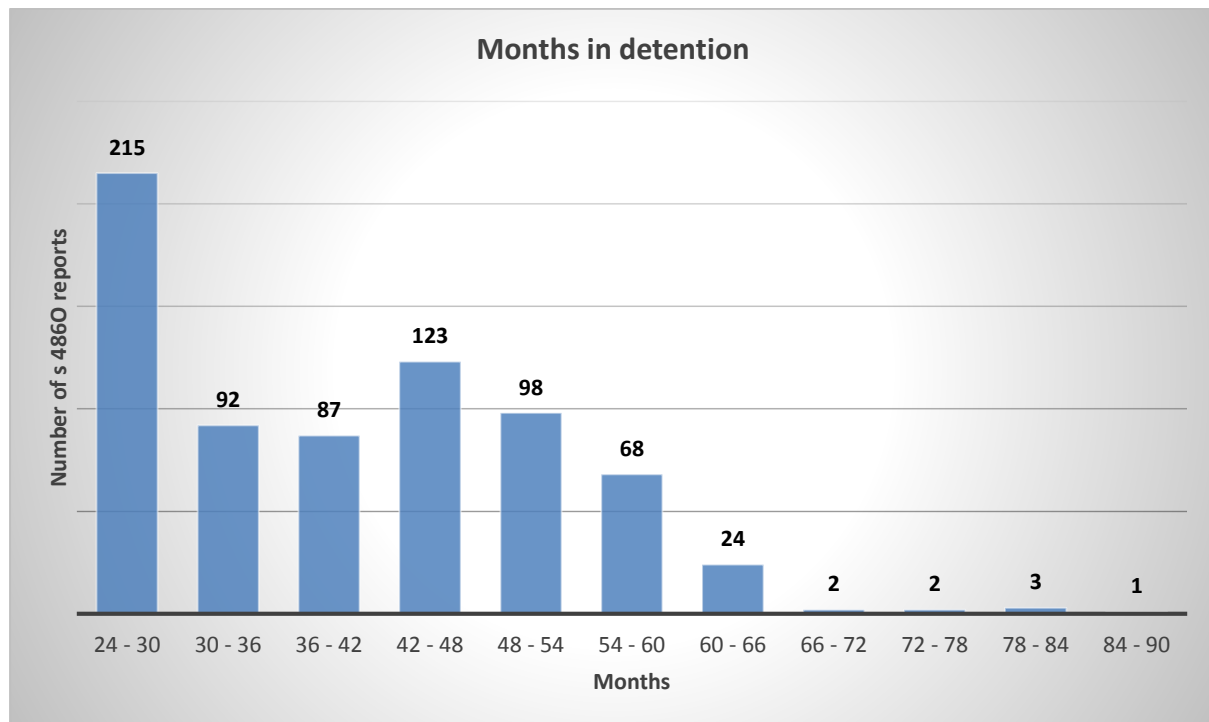
Fig 17



Duration of detention

Figure 18 shows the number of months all detainees reported on in the standard format in 2014/15 had been in detention at the time their most recent s 486N review was received from the department.

Fig 18



Post 13 August 2012 cohort

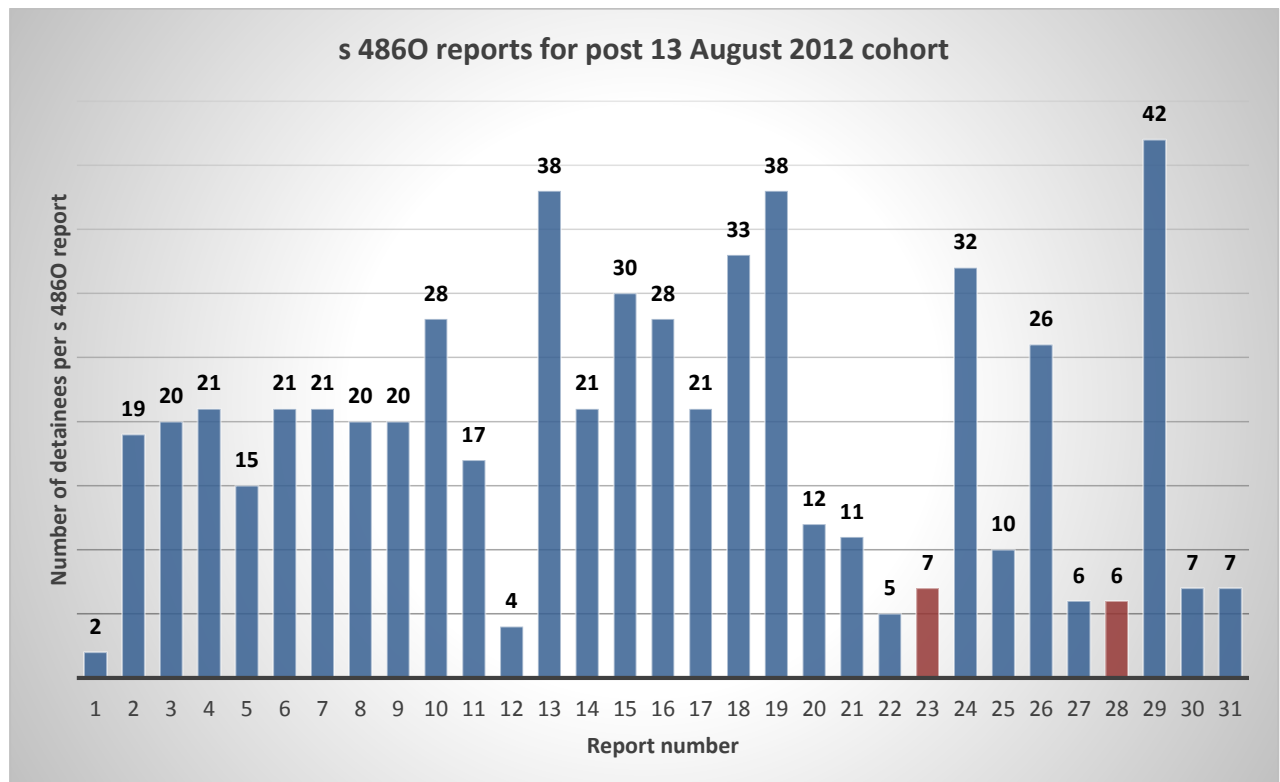
In 2014/15 the Ombudsman continued to report in an abridged format for detainees who arrived in Australia after 13 August 2012. The government announced that such people would be transferred to regional processing centres (RPCs) to have their claims for protection assessed and they would not be considered for resettlement in Australia.

Due to capacity restraints at the RPCs a number of these detainees have not been transferred and are residing in Australia (see figure 20) and their claims for protection have not been assessed. This meant that the usual details that would be included in a s 486N review from the department were not available so an abbreviated form of s 486N review was submitted to the Ombudsman by way of a schedule with details of the name, nationality, date of birth and gender recorded as well as the date of arrival and the name of the boat they arrived on.

The Ombudsman subsequently adopted a form of s 486O report that noted such details and reported on any medical information that was made available as well as information provided by those detainees who were able to be interviewed.

A summary of the number of people included in each of the 31 such reports tabled is recorded in figure 19.

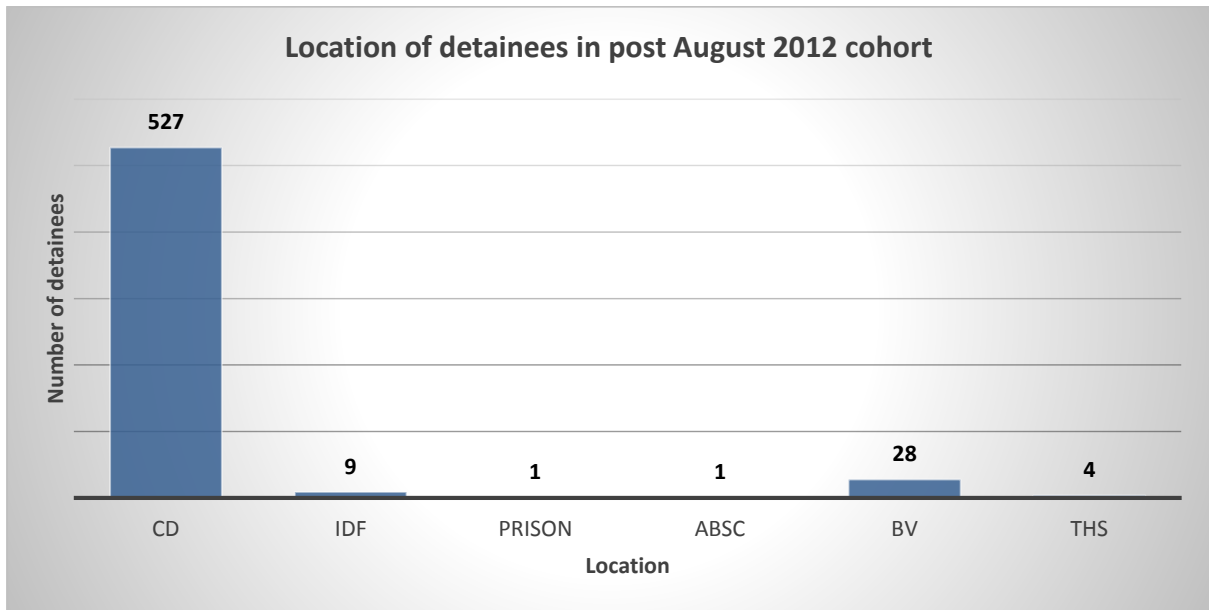
Fig 19



Reports number 23 and 28 were for children born in detention in Australia, whose parents were in the post 13 August 2012 cohort.

The location of the individuals at the time their s 486N review was received, many of whom are in family groups, is shown in figure 20.

Fig 20



Legend

CD	Community Detention	ABSC	Absconded from detention and still at large
IDF	Immigration detention facility	BV	Released on Bridging visa
PRISON	Prison	THS	Released on Temporary Humanitarian Stay visa