

## 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 and Ms Y. Mr X remained in restricted immigration detention for more than 30 months (two and a half years) and Ms Y remained in restricted immigration detention for more than 24 months (two years).

<b>Name</b>	Mr X (and wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1966
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Family details

<b>Family members</b>	Ms Y (wife)
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1976
<b>Total days in detention</b>	Not provided

<b>Ombudsman ID</b>	1003120
<b>Date of DIBP's reports</b>	30 April 2015 and 29 October 2015

### Detention history

30 April 2013	Mr X and Ms Y 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) 668 <i>Ramsgate</i> , indicating that they arrived as 'direct entry persons'. <sup>1</sup>  They were transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
8 May 2013	Transferred to Wickham Point APOD.
20 August 2014	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.
18 June 2015	Ms Y was granted a Bridging visa and released from detention.
6 August 2015	Mr X was transferred to Perth Immigration Detention Centre.
26 November 2015	Mr X was granted a Bridging visa and released from detention.

<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.

## 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.	
12 March 2014	DIBP notified Mr X and Ms Y of the unintentional release of personal information <sup>2</sup> and advised that the privacy breach would be taken into account when considering their protection claims.
7 May 2015	Referred on a ministerial submission for consideration under s 195A for the grant of Bridging visas.
28 May 2015	The Minister declined to intervene in Mr X's case.
18 June 2015	Ms Y was granted a Bridging visa. DIBP provided no further information about her case progression.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
29 October 2015	DIBP advised that Mr X's case was being assessed against the guidelines under s 195A. DIBP further advised that Mr X is yet to be invited to lodge an application for a temporary visa.
26 November 2015	Mr X was granted a Bridging visa.

## Health and welfare

### Mr X

International Health and Medical Services (IHMS) provided details of Mr X's health and welfare. No significant ongoing mental health concerns were noted.	
10 July 2013 – February 2015	Mr X was treated for reflux and throat discomfort with prescription medication and underwent a number of investigations. He attended appointments with an ear, nose and throat specialist in May 2014 and February 2015 and was prescribed further medication. His condition was monitored and no further concerns were raised.

### Ms Y

DIBP did not provide an IHMS Health Summary Report for Ms Y.	
25 August 2013	A DIBP Incident Report recorded that Ms Y was allegedly one of 157 detainees refusing food and fluid as a form of protest.

<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.

## Other matters

DIBP advised that Mr X was previously a person of interest following his alleged involvement in people smuggling activities.	
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 Ms Y who arrived on SIEV <i>Ramsgate</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.
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### **Ombudsman assessment/recommendation**

Ms Y was granted a Bridging visa on 18 June 2015 and released from immigration detention.

Mr X was granted a Bridging visa on 26 November 2015 and released from immigration detention.

Mr X and Ms Y were detained on 30 April 2013 after arriving in Australia aboard SIEV *Ramsgate*. Ms Y was held in restricted detention for more than two years before being granted a Bridging visa. Mr X was held in restricted detention for more than two and a half years before being granted a Bridging visa.

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 29 September 2015 to allow Mr 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 Mr X and Ms Y may not have been subject to the s 46A bar due to their arrival on the Australian mainland as 'direct entry persons' on 30 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 Mr X and Ms Y's method of arrival, the provision of the *Migration Act 1958* under which they were detained, and whether they should have ever been subject to the s 46A bar.