

# 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 who have remained in immigration detention for more than 36 months (three years).

The first report 1001946<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 (and family)
<b>Citizenship</b>	Stateless (claimed), born in Country A
<b>Year of birth</b>	1990
<b>Total days in detention</b>	1,101 (at date of DIBP's latest report)

## Family details

<b>Family members</b>	Ms Y (wife)	Master Z <sup>2</sup> (son)
<b>Citizenship</b>	Stateless (claimed), born in Country A	Stateless (claimed), born in Australia
<b>Year of birth</b>	1994	2013
<b>Total days in detention</b>	1,101 (at date of DIBP's latest report)	795 (at date of DIBP's latest report)

<b>Ombudsman ID</b>	1003228
<b>Date of DIBP's reports</b>	29 April 2015 and 26 October 2015

## Detention history

20 October 2012	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) 484 <i>Nangle</i> , indicating that they arrived as 'direct entry persons'. <sup>3</sup>  They were transferred to Darwin Airport Lodge Alternative Place of Detention.  Mr X and Ms Y arrived in Australia with Mr Y's cousin, Ms Q and her children. They were granted Bridging visas on 9 April 2015 and reside in the community.
2 January 2013	Transferred to community detention.

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

<sup>2</sup> Master Z was born in Australia in May 2013 and was subject to an individual report under s 486N. He was previously reported on in Ombudsman report 1003370 and is now included in his family's report.

<sup>3</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 and his family were 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.	
25 September 2013	Mr X lodged a Protection visa application on behalf of his family. DIBP notified Mr X that the application was invalid as they were barred from lodging a valid visa application.
20 November 2013	Mr X and Ms Y lodged a Protection visa application on behalf of their son, Master Z. DIBP notified Mr X that the application was invalid as Master Z was subject to the bar under s 46A.
13 March 2014	DIBP notified Mr X and his family of the unintentional release of personal information. <sup>4</sup>
26 May 2015	The Minister lifted the bar under s 46A to allow the family to lodge a temporary visa application.
15 July 2015	DIBP invited Mr X and his family to lodge a temporary visa application.
2 September 2015	Mr X and his family lodged an application for a Safe Haven Enterprise Visa (SHEV).
26 October 2015	DIBP advised that identity checks for Mr X and his family were initiated on 18 July 2013 and given that processing of the family's claims for protection have not yet commenced, security and character checks had not been requested.

## Criminal matters

23 October 2014	Mr X was issued with a Family Violence Order by the State Q Police.
20 February 2015	Mr X appeared before the Magistrates Court of State Q and was found guilty of common assault and placed on a good behaviour bond for 15 months. No conviction was recorded.

## Health and welfare

*Mr X*

10 September 2013 – 11 September 2013	International Health and Medical Services (IHMS) advised that Mr X was admitted to a hospital to drain an abscess. He was discharged with a prescription for antibiotic medication and advised to attend follow-up appointments with a community nursing service. He also attended a surgical outpatient clinic for review. No further concerns were raised.
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<sup>4</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.

7 January 2014	<p>Mr X presented to a general practitioner (GP) with ongoing back pain. He was referred for diagnostic testing and prescribed with pain relief medication.</p> <p>IHMS advised that x-ray and pathology testing identified no abnormalities and it was noted that his pain was most likely musculoskeletal (dates not provided). He was prescribed with anti-inflammatory medication but continued to present with ongoing pain. The GP suggested physiotherapy which was declined by IHMS because it was considered to be outside community standards.</p>
3 June 2014	He was diagnosed with a parasitic disease and prescribed with medication. A follow-up review was scheduled for December 2014. No further information was provided.
23 October 2014	He was referred for counselling and anger management after being issued with a family violence order by the State Q Police. Mr X had reportedly stated that he had pushed his wife out of frustration related to his continued back pain.
DIBP did not provide an IHMS Health Summary Report for Mr X for the period 25 October 2014 to 29 April 2015.	
4 March 2015	A computed tomography scan identified an abscess on his spine likely to be tuberculosis (TB). He was referred to a hospital infectious disease and neurological clinic for further assessment.
5 March 2015	A DIBP Incident Report recorded that Mr X was admitted to a hospital with suspected TB in his spine. No further information was provided.
19 March 2015	Additional investigations confirmed he had Pott's disease, a form of TB which occurs in the spine. He was prescribed with preventative TB medication.
14 April 2015 – 1 May 2015	Mr X was admitted to hospital for surgery on his spine and treatment for acute hepatitis after being prescribed with preventative TB medication. At discharge, he was provided with an ongoing treatment plan and scheduled specialist reviews.
13 August 2015 and 10 September 2015	He attended reviews at the infectious disease and neurological clinic. IHMS advised his next review was scheduled for 10 October 2015.
29 September 2015 – ongoing	IHMS advised that Mr X's anger management issues had been addressed and that no further concerns were reported. His mental health is monitored by his GP.

*Ms Y*

21 October 2012	Ms Y informed IHMS that she was pregnant. She was referred for antenatal care.
December 2012	A TB skin test returned positive results and she was referred to a chest clinic. The chest clinic confirmed that she was asymptomatic and her chest x-rays were normal (dates not provided).

18 December 2012	She was prescribed with preventative TB medication but it was reported that she was non-compliant.
May 2013	Ms Y gave birth to her son without complication.
July 2013	Chest x-ray returned normal results. The preventative TB medication was ceased and she was monitored as per state policy.
September 2013	Ms Y was admitted to a hospital psychiatric unit for a two week period (dates not provided) following a psychotic episode. She was prescribed with medication. No further information was provided.
18 August 2014	The GP noted that she was tearful when discussing her loneliness because she had very little community support.
27 October 2014	The GP noted that Ms Y was experiencing symptoms of stress related to ongoing domestic violence issues and reduced community support. The GP recommended that Ms Y and her family be transferred interstate to improve her mental health.
22 December 2014	Ms Y presented to a GP with knee pain. She was prescribed with pain relief medication and referred for physiotherapy.
17 February 2015	Following health concerns, Ms Y was referred to a specialist for further investigation and prescribed with medication. An appointment was scheduled for 26 May 2015.
24 September 2015	IHMS advised Ms Y did not present with any mental health concerns since its previous report to the Ombudsman.

#### *Master Z*

IHMS advised that Master Z has not required treatment for any major physical or mental health issues.

#### **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 Ms Y 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.

### **Ombudsman assessment/recommendation**

Mr X and Ms Y were detained on 20 October 2012 after arriving in Australia aboard SIEV *Nangle* and have been held in detention for over three years.

The Ombudsman notes that DIBP considered that Mr X and Ms Y were subject to the bar under s 46A for over two and a half years until the Minister lifted the bar on 26 May 2015 to allow Mr X and Ms Y to apply for a temporary visa. On 2 September 2015, Mr X and Ms Y lodged a SHEV application.

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 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 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 been subject to the s 46A bar.