

# 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, Mr Y and Ms Z who remained in immigration detention for more than 30 months (two and a half years).

The first report 1001917<sup>1</sup> was tabled in Parliament on 13 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
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1986

## Family details

<b>Family members</b>	Mr Y (relationship to Mr X not provided)	Ms Z (relationship to Mr X not provided)
<b>Citizenship</b>	Country A	Country A
<b>Year of birth</b>	1991	1997

<b>Ombudsman ID</b>	1003335
<b>Date of DIBP's report</b>	14 April 2015
<b>Total days in detention</b>	Not provided

## Recent detention history

1 October 2012	Mr X, Mr Y and Ms Z 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) 456 <i>Kalang</i> , indicating that they arrived as 'direct entry persons'. <sup>2</sup>
5 May 2015	Granted Bridging visas and released from community detention.

## Recent visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to being released from detention, Mr X, Mr Y and Ms Z were part of a cohort who had 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.	
5 May 2015	Granted Bridging visas.

<sup>1</sup> Mr X, Mr Y and Ms Z were previously reported on in a group report of people who arrived on SIEV 456 *Kalang*.

<sup>2</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.

## Health and welfare

Mr X and Mr Y

International Health and Medical Services (IHMS) advised that Mr X and Mr Y did not require treatment for any major physical or mental health issues.
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Ms Z

IHMS advised that Ms Z did not require treatment for any significant mental health concerns.
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1 October 2012 – 5 May 2015	Ms Z was identified as a tuberculosis contact at her induction and required monitoring as per state policy.
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## 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, Mr Y and Ms Z who arrived on SIEV <i>Kalang</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	<p>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.</p>

### **Ombudsman assessment/recommendation**

Mr Z, Mr Y and Ms Z were granted Bridging visas on 5 May 2015 and released from immigration detention.

Mr X, Mr Y and Ms Z were detained on 1 October 2012 after arriving in Australia aboard SIEV *Kalang*, and were held in detention for over two and a half years before being granted Bridging visas

The Ombudsman notes that DIBP considers that Mr X, Mr Y and Ms Z 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 information available to the Ombudsman at the time of this report, it would appear that Mr X, Mr Y and Ms Z should never have been subject to the s 46A bar due to their arrival on the Australian mainland as 'direct entry persons' on 1 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, Mr Y and Ms Z'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.