

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 remained in immigration detention for more than 30 months (two and a half years).

The first report 1002664 was tabled in Parliament on 14 September 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and family)
Citizenship	Stateless (claimed), born in Country A
Year of birth	1980
Total days in detention	917 (at date of DIBP's report)

Family details

Family members	Ms Y (wife)	Master Z (son)	Master Q (son)
Citizenship	Stateless (claimed), born in Country A	Stateless (claimed), born in Country B	Stateless (claimed), born in Australia
Year of birth	1992	2011	2013 ¹
Total days in detention	917 (at date of DIBP's report)		Not provided

Ombudsman ID	1003146
Date of DIBP's report	6 August 2015

Detention history

31 January 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) 582 <i>Infinity</i> , indicating that they may have arrived as 'direct entry persons'. ² The family was transferred to Darwin Airport Lodge Alternative Place of Detention.
14 March 2013	Transferred to community detention.
22 October 2015	Granted Bridging visas and released from detention.

¹ The Department of Immigration and Border Protection (DIBP) advised that the Ms Y's 24-month International Health and Medical Services (IHMS) Health Summary Report provided the incorrect date of birth for Master Q.

² 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

DIBP advised that prior to being released from detention, 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 the Minister had 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
22 October 2015	Granted Bridging visas.

Health and welfare

Mr X and Master Z

IHMS advised that Mr X and Master Z did not require treatment for any major physical or mental health issues.

Ms Y

IHMS provided details of Ms Y's health and welfare. No significant ongoing mental health concerns were noted.	
May 2015	Ms Y gave birth to her son ⁴ without complication.
27 July 2015	IHMS reported that Ms Y attended regular specialist appointments for monitoring of hepatitis B.

Master Q

DIBP did not provide an IHMS Health Summary Report for Master Q.

Detention incidents

10 October 2013	DIBP advised that Mr X allegedly assaulted Ms Y and the police were notified.
20 December 2013	Mr X was issued with an Apprehended Domestic Violence Order (ADVO). DIBP advised that no further incidents were reported and the ADVO ceased on 20 December 2014.

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.

⁴ Master R was born in Australia in May 2015. He has been in detention for less than two years and is not subject to reporting under s 486N.

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>Infinity</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.

Ombudsman assessment

Mr X and his family were granted Bridging visas on 22 October 2015 and released from immigration detention.

Mr X and his family were detained on 31 January 2013 after arriving in Australia aboard SIEV *Infinity* and were held in immigration detention for more than two and a half years before being granted Bridging visas.

The Ombudsman 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 31 January 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. The Ombudsman is considering DIBP's response and makes no recommendations in this report.