

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

**Immigration Ombudsman**

**January 2015**

## Contents

Introduction	Page 1
The Ombudsman's s 486O reports	Page 3
Report types – first and subsequent reports	Page 4
Timeliness of reports	Page 4
Report format	Page 10
Location	Page 11
Interviews	Page 12
Detainees with an adverse security assessment	Page 13
'SZQRB' cohort	Page 14
Report recommendations	Page 15
The asylum seeker experience	Page 17
Protection claim	Page 17
Process overview	Page 17
Processing time	Page 18
Review	Page 19
'Post 13 August 2012' cohort	Page 22

# Introduction

## Background

In 2005 the *Migration Act 1958* was amended to introduce a regime of statutory reporting for people held in immigration detention for more than two years.

These amendments require the Secretary of the department 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 Parliament<sup>1</sup> by the Minister. Such reports may include recommendations, which the Minister is not obliged to accept.

## 2014 reports

This report is an analysis of all reports sent to the former Minister and tabled in Parliament in 2014 and draws on similar data as the report for 2013 that was published on the Ombudsman's website in July 2014.

In 2014 a total of 616 s 486O reports in the usual format for individuals and family groups were sent to the Minister and tabled in Parliament, compared with 709 in 2013. These 616 reports represent 871 people.

With this second report it is possible to compare data with that in the previous report. Where applicable, tables, charts, and the narrative make such comparisons and provide comment or explanation as appropriate.

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.

## Boat arrivals post 13 August 2012

With the government's policy that no person arriving in Australia by boat after 13 August 2012 to claim protection would be advantaged by having their claims processed in Australia before others with claims located offshore, the department was unable to provide the level of detail normally included in s 486N reports for people whose reports came due after August 2014.

The majority of these people are living in community detention and by late 2014 there had been no processing of their claims for protection. Taking these circumstances into account the department changed the format of its s 486N reports, using a schedule to provide details of the circumstances of the detainees' arrival, nationality and gender, and where applicable, details of medical conditions and treatment and major incidents.

---

<sup>1</sup> 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 reports

The Ombudsman then adopted a revised format of s 486O report, with single reports prepared for groups of people according to the boat on which they arrived. Five such summary reports were presented to the Minister in 2014.

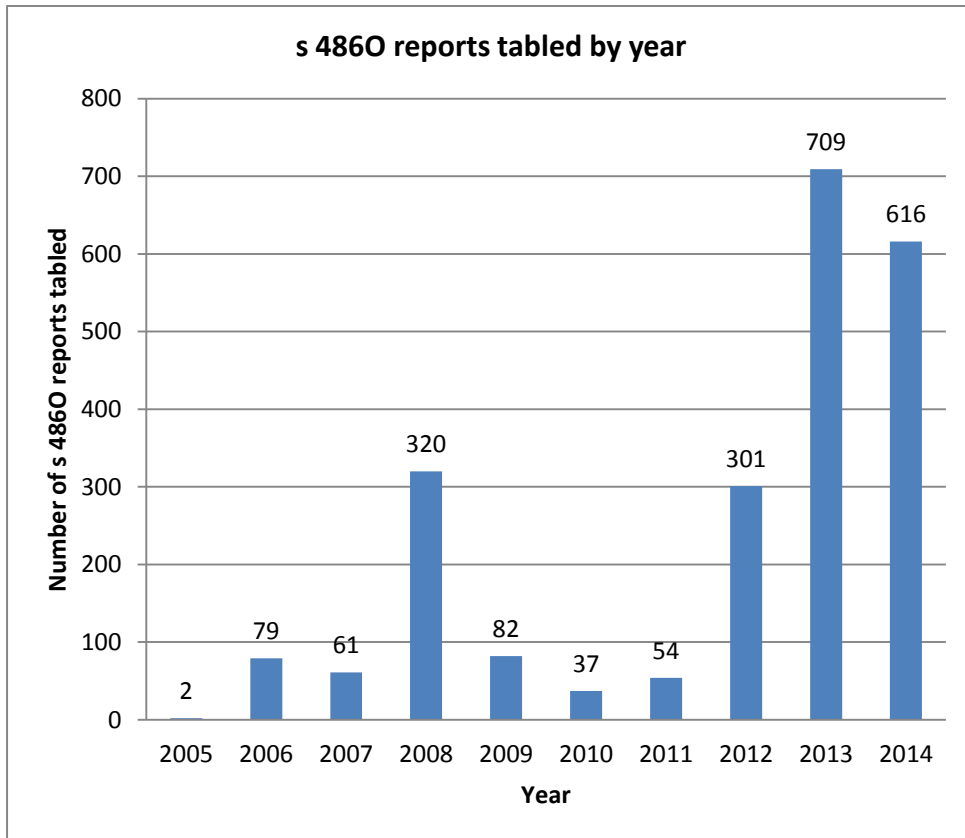
The first two reports were for 21 individuals and were tabled on 29 October. A further three reports for 56 people were tabled on 3 December 2014.

This format of report will continue to be prepared for this cohort until such time as the department is able to report on the circumstances of these persons' detention and their claims for protection in individual s 486N reports to the Ombudsman.

## The Ombudsman's s 486O reports

2014 saw the second 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 calendar year which broadly reflects the number of people in immigration detention in each of those years.

Fig 1

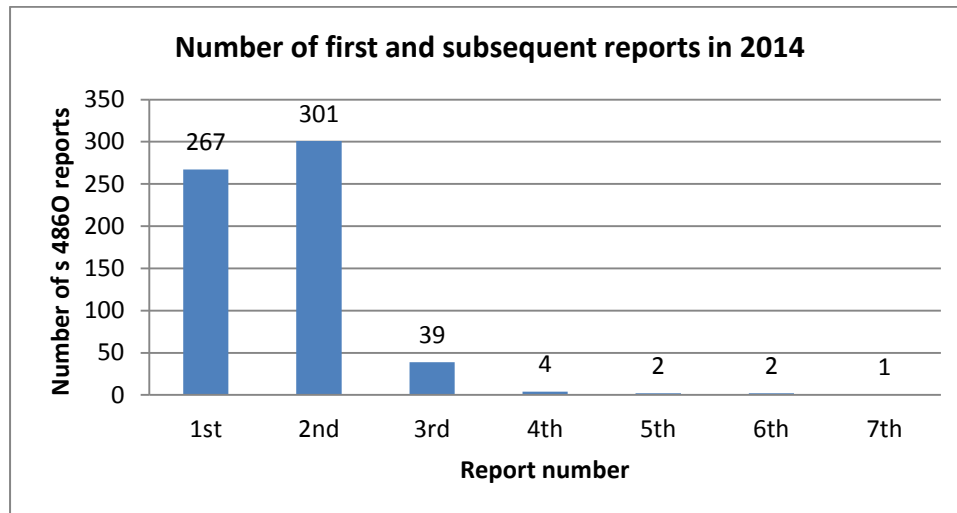


## Report type – first and subsequent reports

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 2 shows the number of first and subsequent s 486O reports tabled in 2014. This shows that 92% are either first or second reports and is a general reflection of the time people are held in detention.

Fig 2



## 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 report 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 report (which may be a first or subsequent report) and the s 486O report being tabled; and
4. the number of s 486N reports 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. 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 is influenced by Parliament’s sitting calendar.

Figure 3 shows how long it takes from the time the first s 486N report is received from the department to when the first s 486O report is sent to the Minister and tabled by him in Parliament.

**Fig 3**

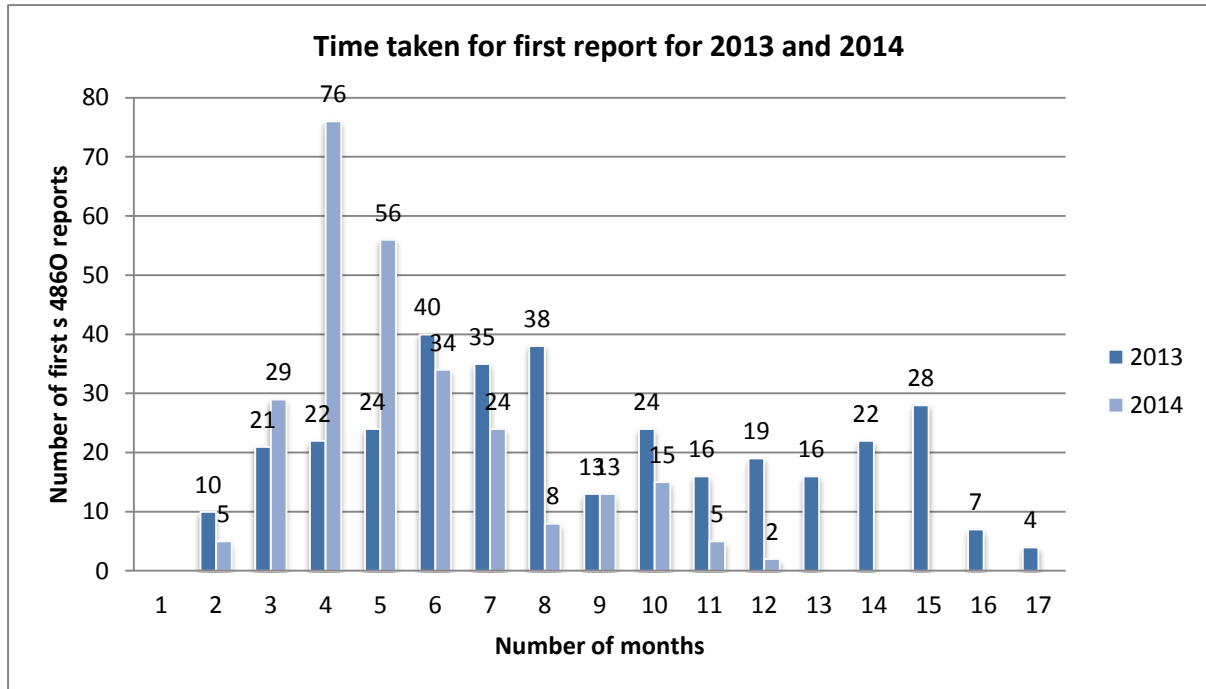


Figure 4 shows the improvement in 2014 in the percentage of s 486O reports tabled within six months, between six and twelve months and in more than 12 months from 2013. It shows that for the 267 first reports in 2014, the Minister tabled 75% within six months and the remaining 25% were tabled within 12 months. This compares favourably with 2013 when only 35% were tabled within six months; 43% took between six and 12 months, and 22% took more than 12 months.

**Fig 4**

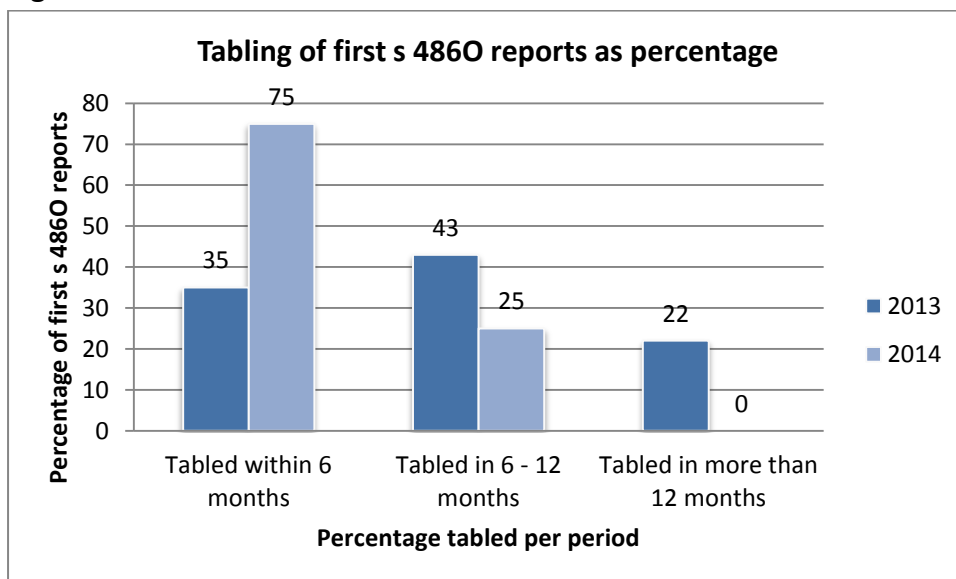


Figure 5 shows the period between tablings for all subsequent s 486O reports tabled in 2014 and this data is compared with that for 2013.

**Fig 5**

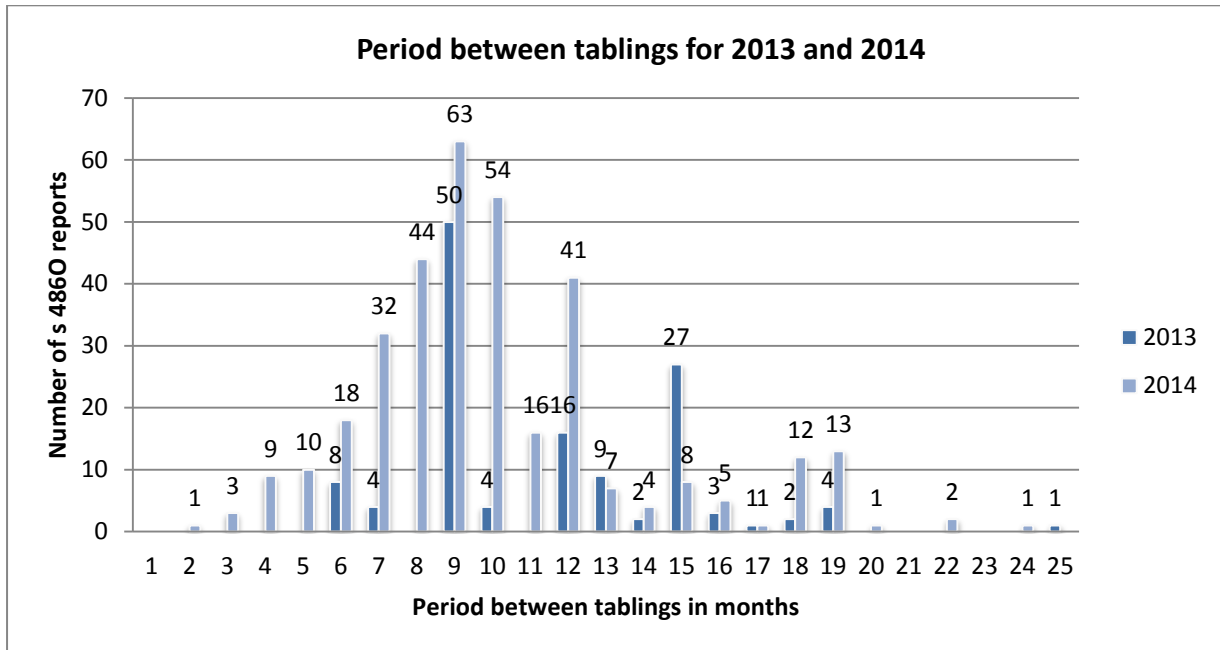
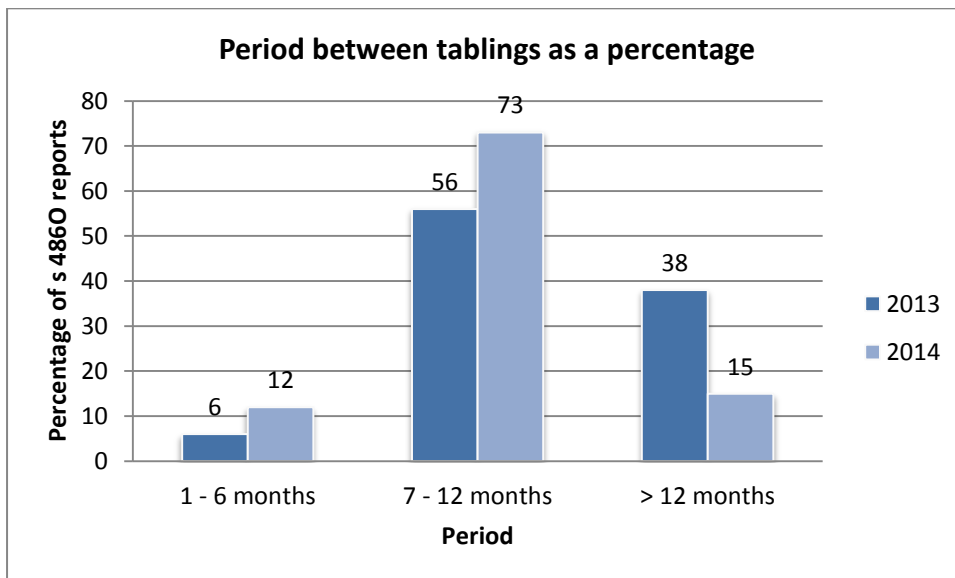


Figure 6 shows the period between tablings as a percentage with 85% of subsequent reports being tabled in 12 months or less from the previous report in 2014, compared with 62% in 2013.

**Fig 6**





The interval between the receipt of the most recent s 486N report and the tabling of the s 486O report is shown in figure 7.

**Fig 7**

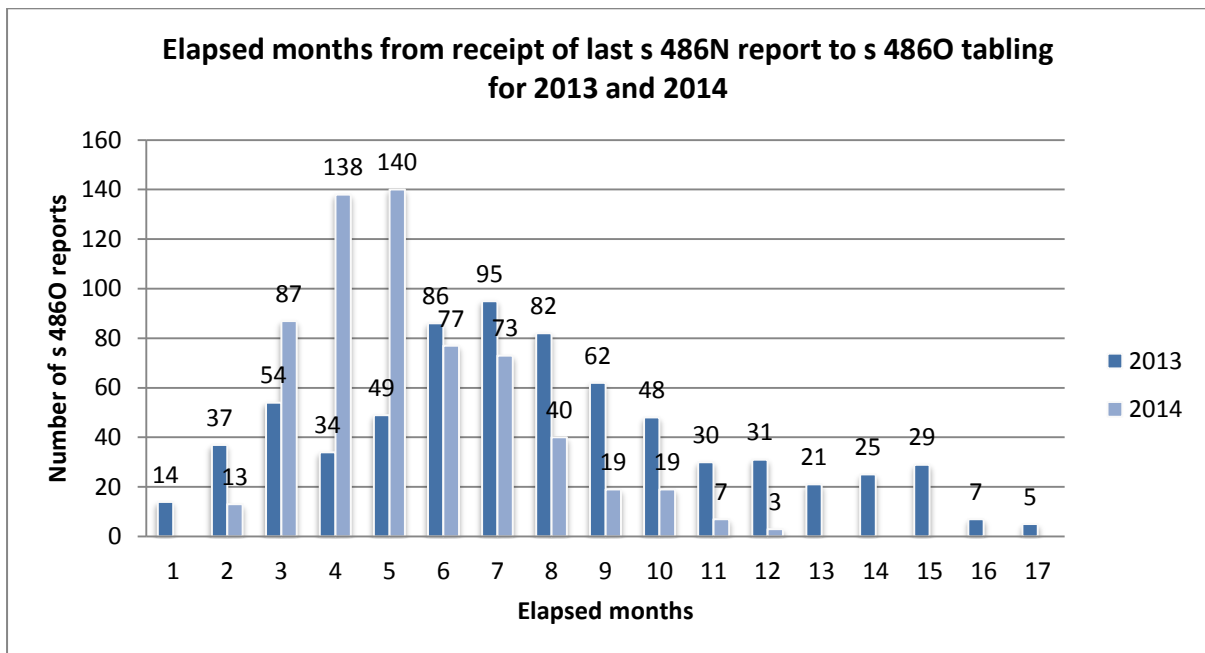
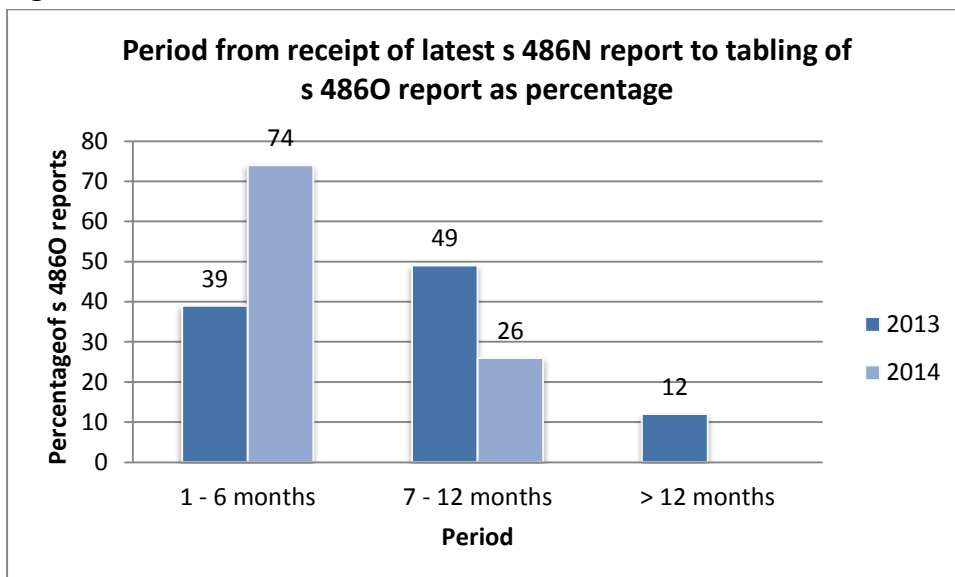


Figure 8 shows the period from receipt of last s 486N report to tabling of s 486O report as a percentage. In 2014 100% of s 486O reports were tabled within 12 months of the last s 486N report being received, compared with 88% in 2013.

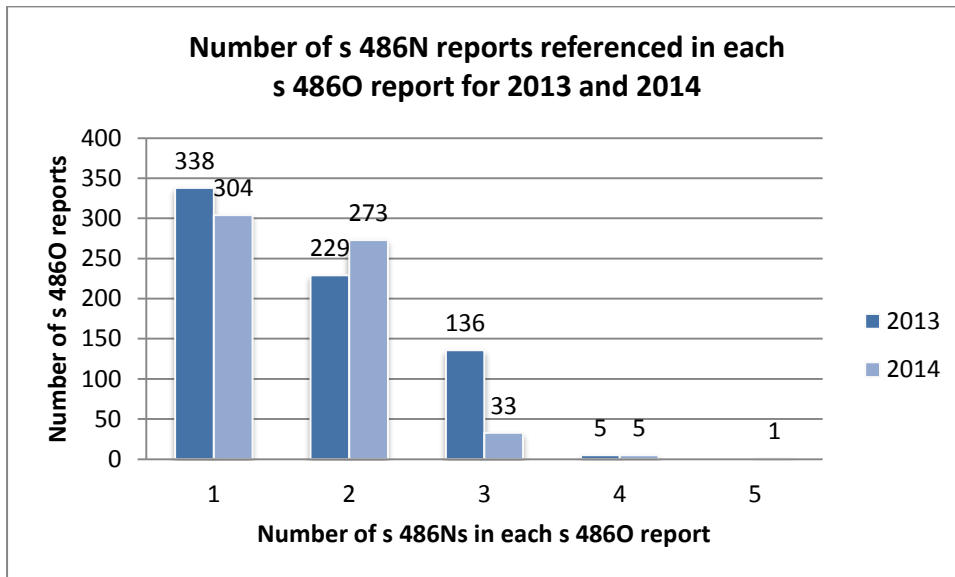
**Fig 8**



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

Figure 9 shows the number of s 486N reports that are referenced in each s 486O report

**Fig 9**



In 2014 93% of s 486O reports referenced one or two s 486N reports, compared with 80% for 2013. In 2014 7% of s 486O reports referenced three or more s 486Ns, compared with 20% in 2013. This is shown in figure 10.

**Fig 10**

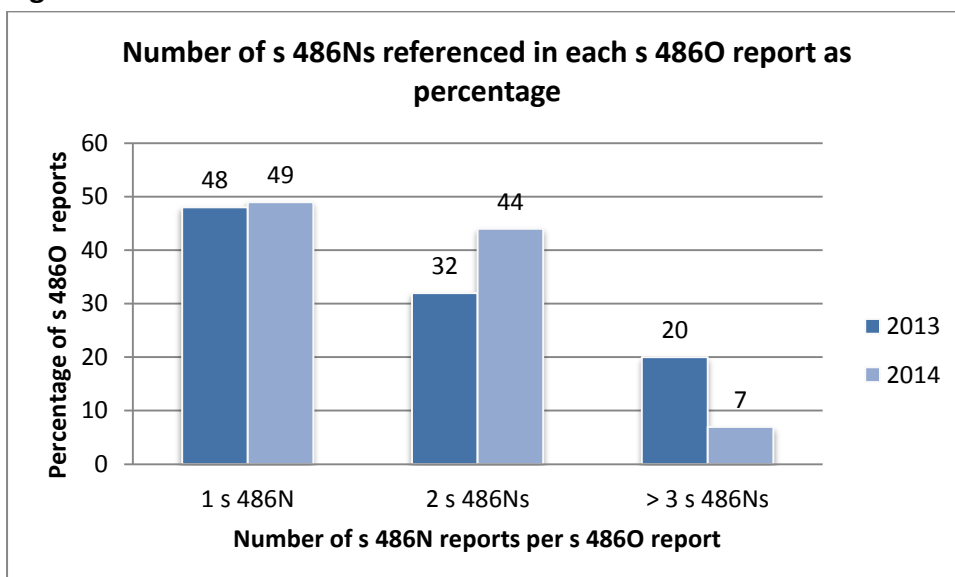
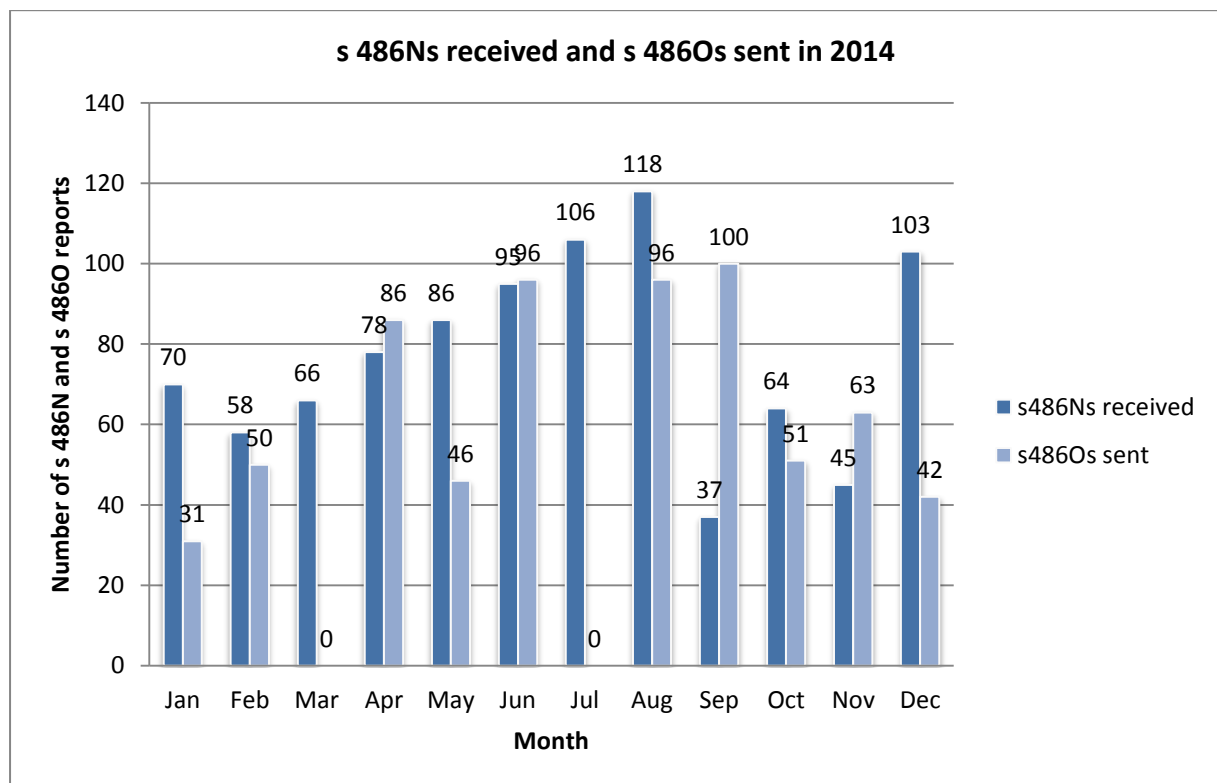


Figure 11 shows the number of s 486N reports received from the department and the number of s 486O reports sent to the Minister in each month for 2014. In two months, March and July, no s 486O reports were sent. The Act requires the Secretary to send the s 486N report within 15 days of it becoming due. However there is no legislated timeframe for the Ombudsman to send the Minister the s 486O report, only requiring that it be done 'as soon as practicable' after the s 486N report has been received.

**Fig 11**

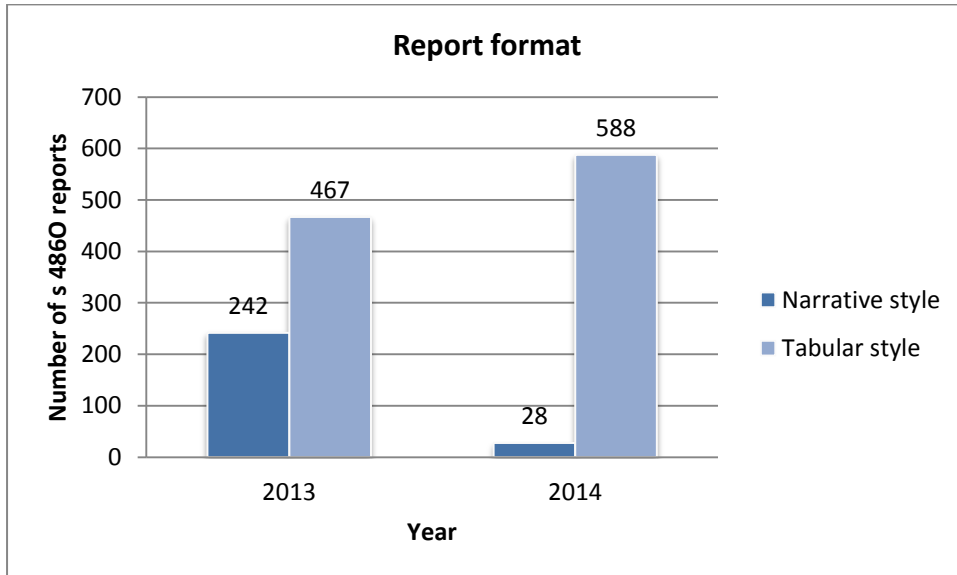


As noted in the review of 2013 s 486O reports, we receive more s 486N reports than the number of s 486O reports that are submitted to the Minister. This is accounted for both by more than one s 486N report being referenced in a single s 486O report (ref fig 9), and the balance of s 486N reports on hand that are waiting to be actioned.

## Report format

The use of the tabular format of report adopted by the Ombudsman's office in 2012 has been expanded in 2014, to the point where only 26, or 4%, of the s 486O reports tabled in 2014 were in the full, or narrative, style. Figure 12 shows the number of reports for each format in 2013 and 2014. It is envisaged that in 2015 all reports will be in the tabular format.

**Fig 12**



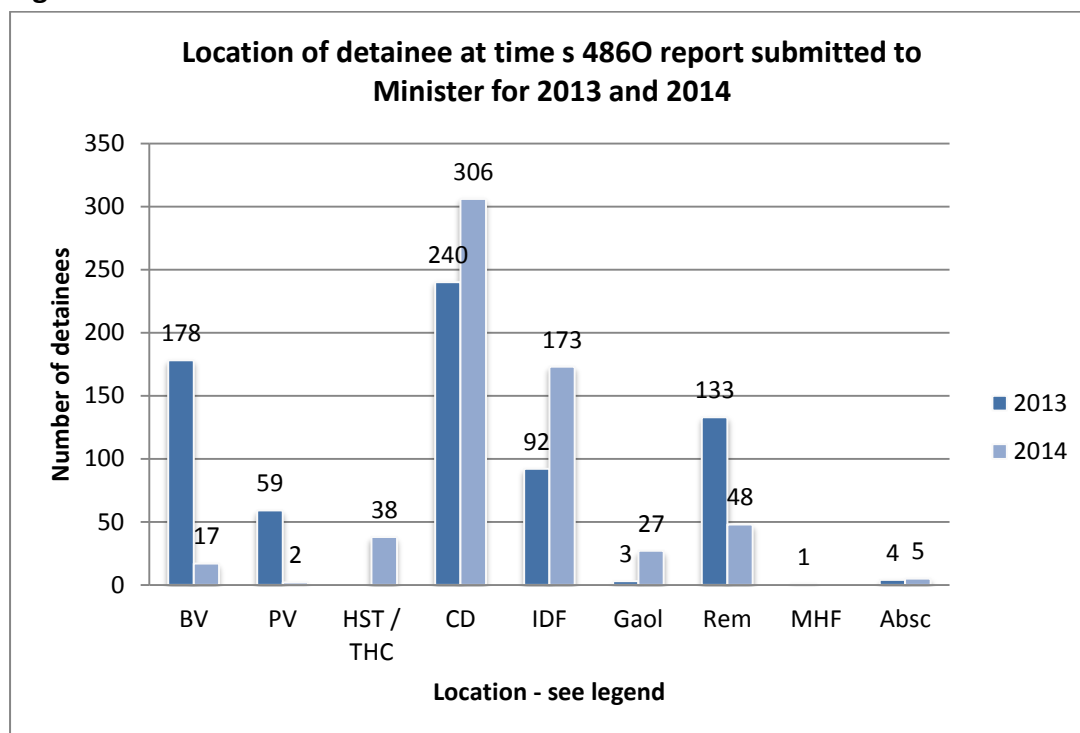
An amended tabular format was introduced for those individuals and families who arrived after 13 August 2012 and who have not had their claims for protection processed.

These people have been reported on as a group according to the boat they arrived on (see figure 28).

## Location

Figure 13 shows the location of detainees at the time their s 486O report was tabled. The major differences between the figures for 2013 and 2014 are the reduction in the number of people who have been released on Bridging or Protection visas, and also in those being removed. 2014 also saw an increase in reports for those in community and restricted detention.

**Fig 13**



## Legend

BV	Released on a Bridging visa	IDF	Immigration detention facility
PV	Released on a Protection visa	Rem	Removed from Australia (voluntarily or involuntarily)
HST / THC	Released on a Humanitarian Stay – Temporary or Temporary Humanitarian Concern visa	Gaol	Gaol
CD	Community detention	MHF	Mental health facility
		Absc	Absconded from detention and still at large

## Interviews

2014 has seen a marked increase in the number of people in immigration detention being interviewed before their s 486O report is written. There are still challenges in interviewing people both in community detention and the more remote detention facilities. The challenges include the availability and quality of interpreters and being able to arrange a suitable time to conduct the interview with the detainee. The Ombudsman’s office was able to increase the percentage of people interviewed in 2014 to 29% compared with 16% in 2013.

Figure 14 also shows for the first time the number of people who we attempted to interview but were not able to contact. The percentage of people who were not interviewed dropped from 83% in 2013 to 59% in 2014 and the percentage that declined to be interviewed rose slightly.

**Fig 14**

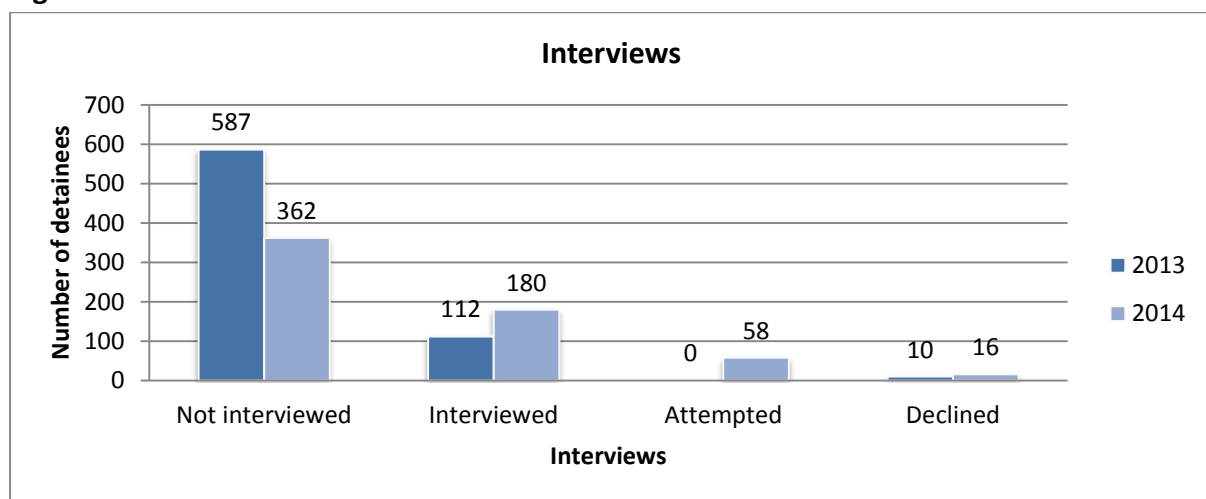
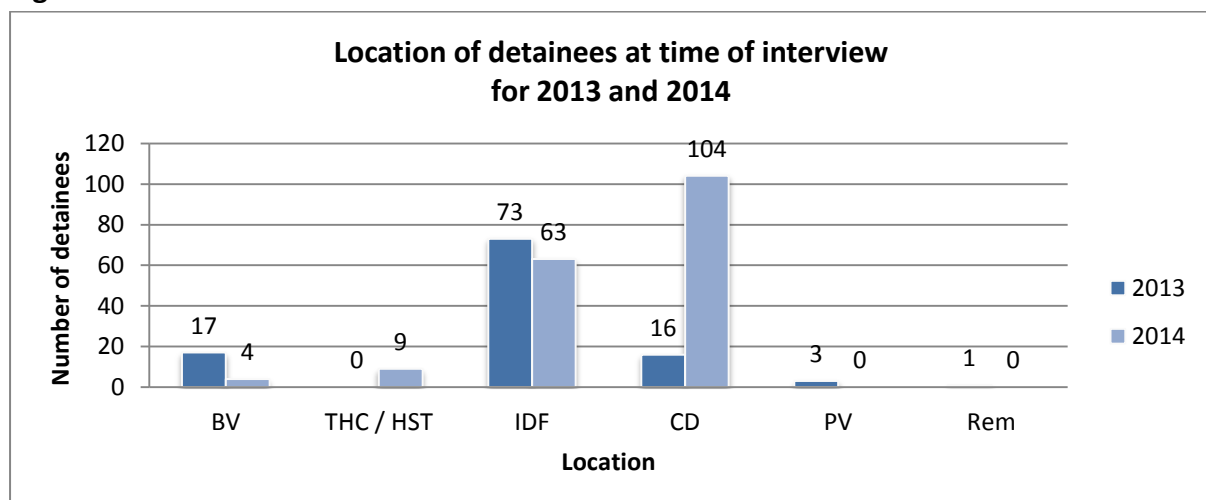


Figure 15 shows the location of detainees who were interviewed. Of particular note is the increase in the number of people in community detention interviewed.

**Fig 15**



See Figure 8 legend for details of location.

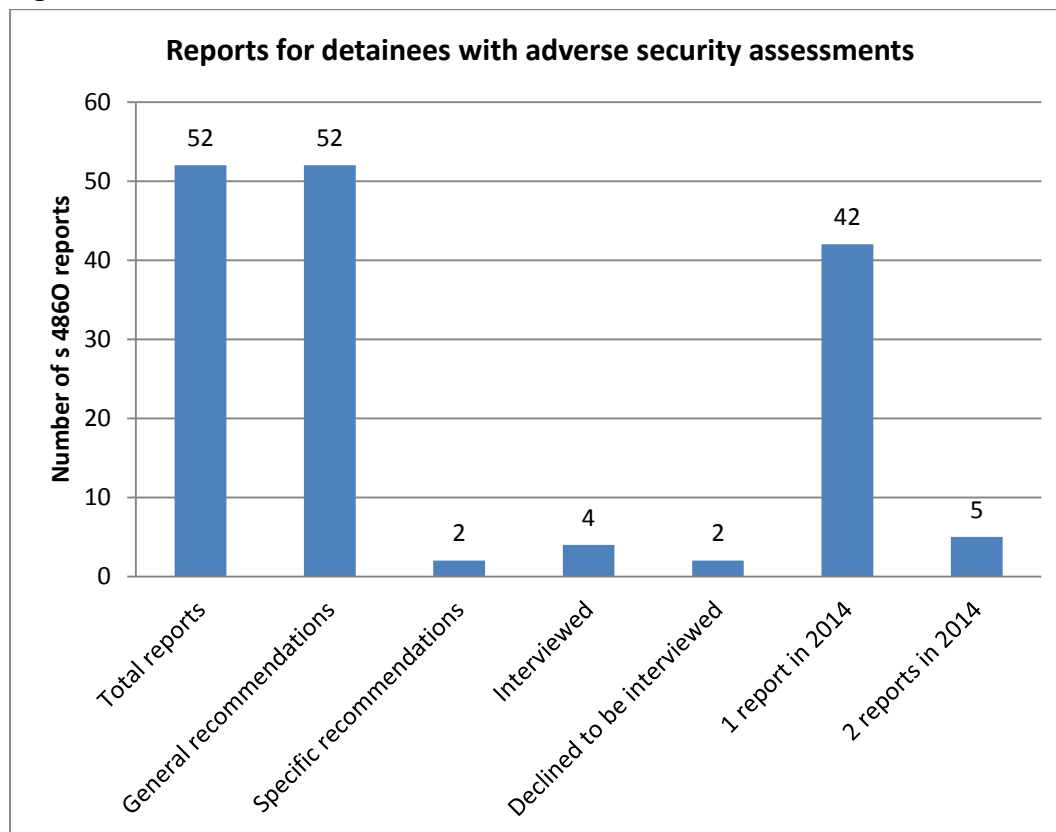
## Detainees with an adverse security assessment

The Ombudsman has been reporting on detainees who have received an adverse security assessment, and who consequently cannot be granted a visa or released from restricted detention, for more than four years.

This cohort of detainees has been, and remains, a significant concern to the Ombudsman as there is no apparent end to the time they will spend in detention with the consequent risk of exacerbating the condition of their mental health. While a number of individuals in this cohort have had their adverse assessment reviewed and subsequently overturned, as of December 2014 there are still 44 such people in restricted detention.

Figure 16 shows the number of s 486O reports for this cohort tabled in 2014, the number of general and/or specific recommendations made in relation to their detention, the number who were interviewed, or declined to be interviewed, and for whom there were one or two reports tabled in 2014.

Fig 16



While figure 16 shows only four detainees of this cohort were interviewed, this reflects only those who have had s 486O reports tabled in 2014.

The Ombudsman's office offered an interview to all 44 detainees with an adverse security assessment in August and September 2014 and 34 of them accepted this offer. These interviews will be reflected in their next s 486O reports submitted to the Minister in 2015.

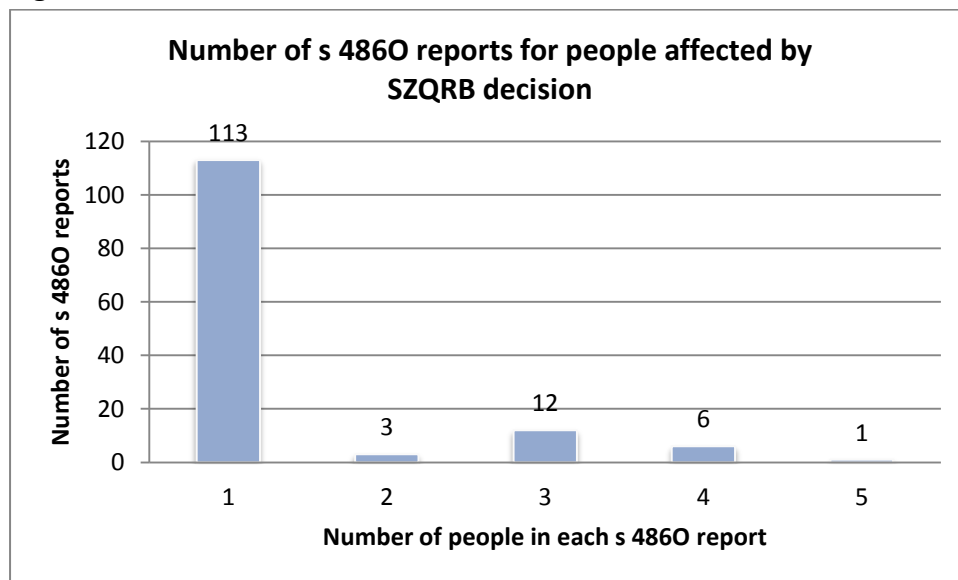
## SZQRB cohort

In the 2013 review of s 486O tablings reference was made to the cohort of detainees affected by the Federal Court's decision in SZQRB<sup>2</sup>. 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. 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 17 shows the number of s 486O reports (135 in total) prepared for people in this cohort, and the number of people (individuals or family groups) included in each report.

Fig 17



<sup>2</sup> Minister for Immigration and Citizenship v SZQRB [2013] FCAFC 33



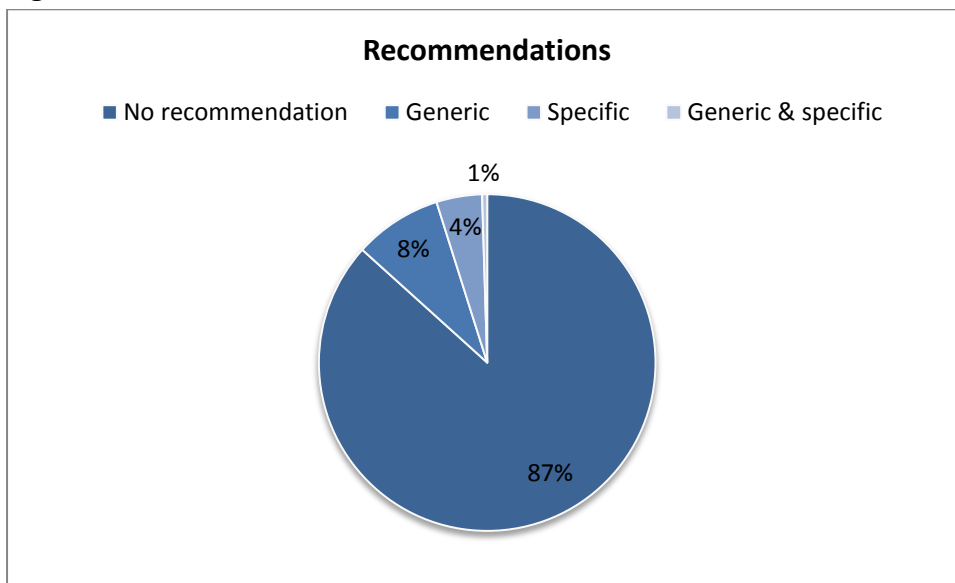
## Report recommendations

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. The Act states that the Minister is not bound by a recommendation made by the Ombudsman.

As in 2013, the recommendations in the reports tabled in 2014 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 18 shows the proportion of reports tabled in 2014 that contained recommendations.

**Fig 18**



## Cohort-specific recommendations

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

- those who have been found to be refugees but have received an adverse security assessment, and
- 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.

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 accepted, 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.

## **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; or 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 report is received for a person about whom a recommendation was made in a previous s 486O report, 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 report is due, the Ombudsman's office receives no further information in relation to the recommendation.

## **The asylum seeker experience**

In 2013 the Ombudsman reported on 492 (69% of total reports) individuals or families in their first report that gave details of their claim for protection and the outcome. In 2014 there were 156 such reports (25% of total reports).

### **Protection claim**

Of the 156 reports with details of a claim for protection, 139 received a negative outcome and 18 received a positive outcome. Of these two were subsequently released from detention with the remainder still 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.

### **Process Overview**

The typical pathway for a person claiming protection in the period to 13 August 2012 was as follows:

- claims for protection are first considered by a DIBP officer through a non-statutory Protection Obligations Evaluation (POE)
- review by the Independent Protection Assessment Office (IPAO)
- review by the Refugee Review Tribunal or Federal Court then possibly the Full Federal Court or High Court.

If at any stage the person is found to be owed protection, and has met the public interest criteria for the grant of a protection visa, the Minister would then consider lifting the s 46A bar to allow a valid application for Protection visa to be made.

### Processing time – claims for protection

Processing times in 2014 are broadly in line with those in 2013, however with considerably reduced numbers. Unlike 2013 when all but one claim was assessed within 12 months, 2014 saw 127 claims (81%) processed within 12 months, and seven (4%) taking more than 18 months.

Figure 19 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 19**

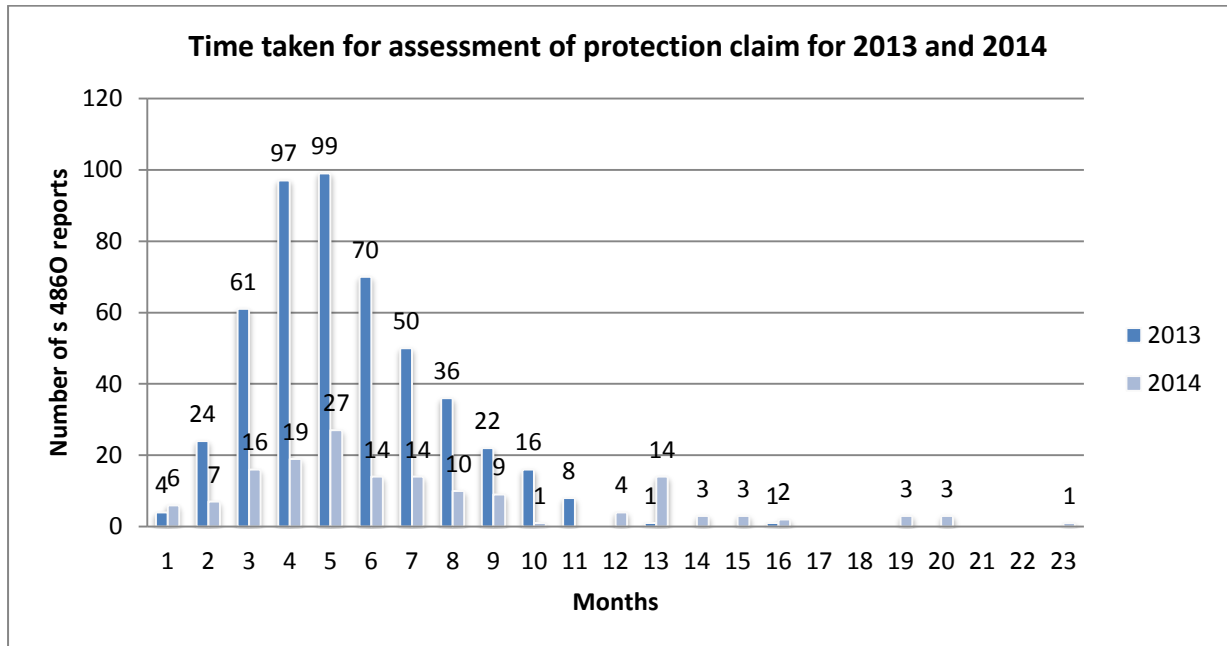
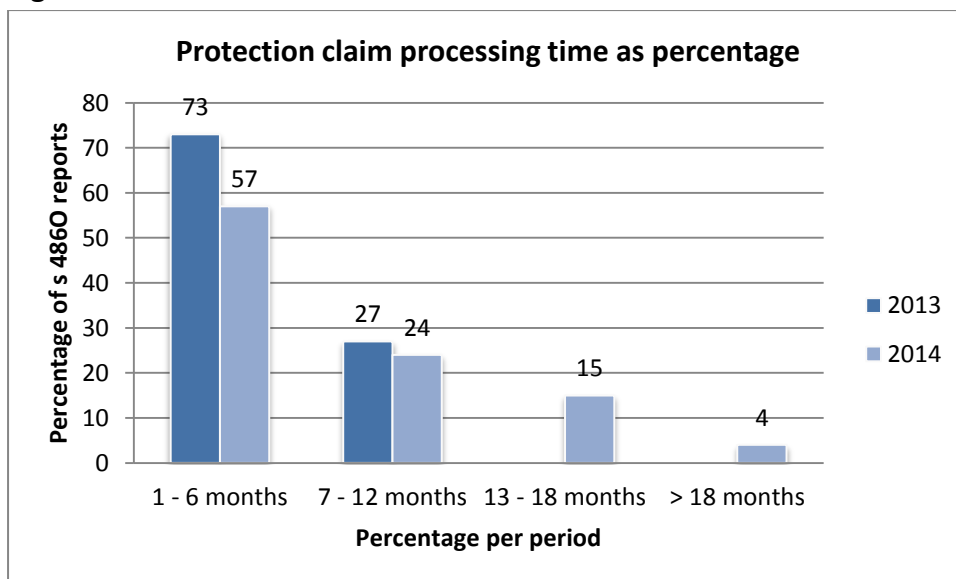


Figure 20 shows the processing times as percentages.

**Fig 20**

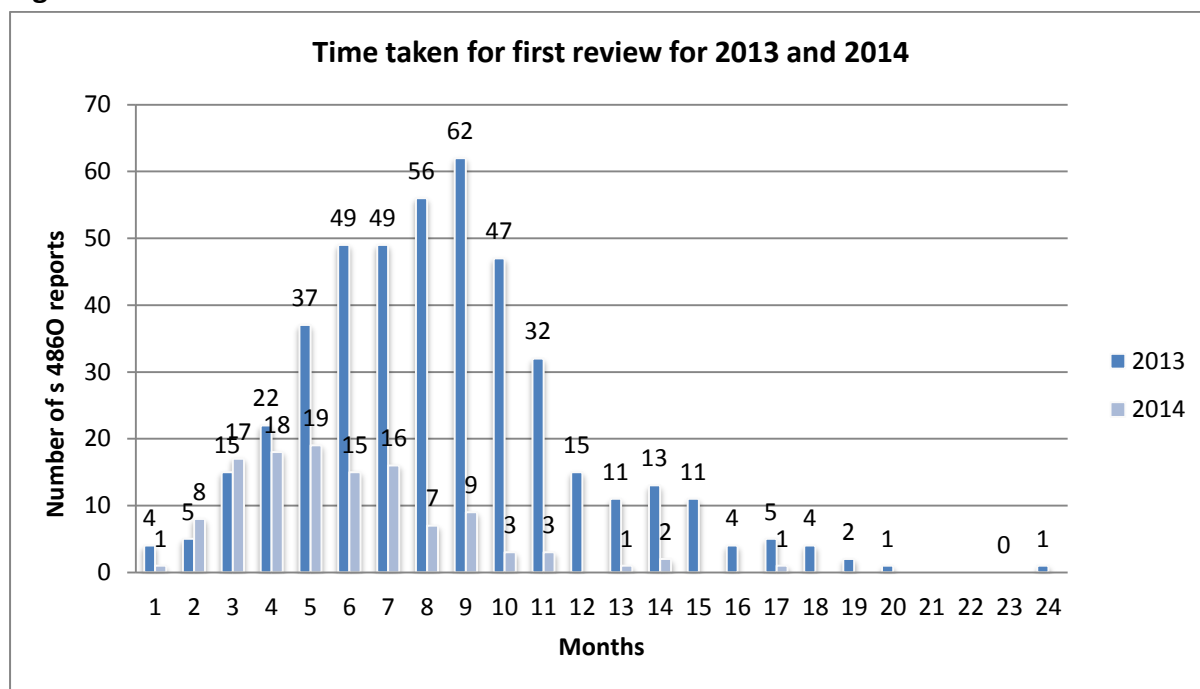


## Review

Of the 156 detainees who received a negative outcome for their claim for protection in 2014, 119 sought a review. Figure 21 shows the time taken from the date of the refusal of their initial claim for protection to the date of the outcome of their review for both 2013 and 2014.

In 2014 65% had their review finalised within six months, compared with 30% in 2013. Only four reviews (3%) took longer than 12 months in 2014 compared with 43% in 2013.

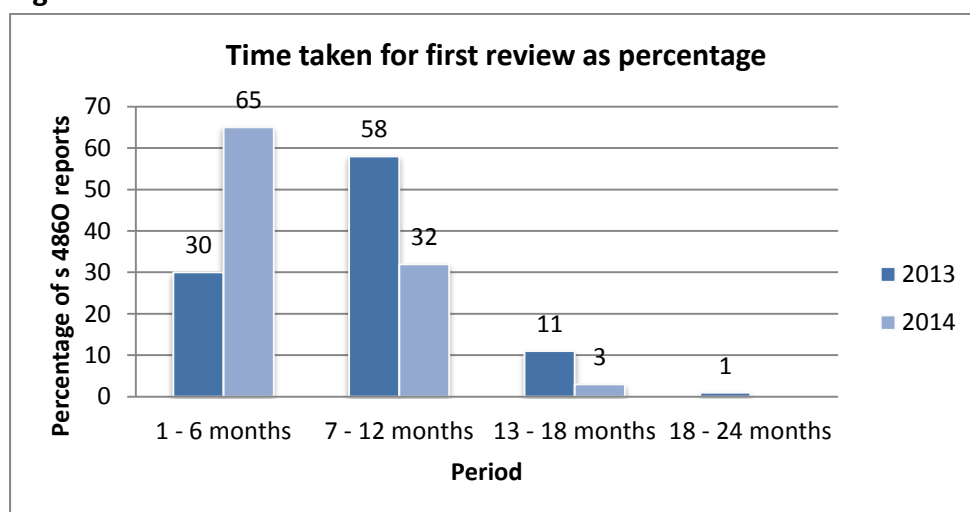
**Fig 21**



For those who sought review of the decision on their claim for protection 19 received a positive outcome and 100 received a negative outcome (see figure 21).

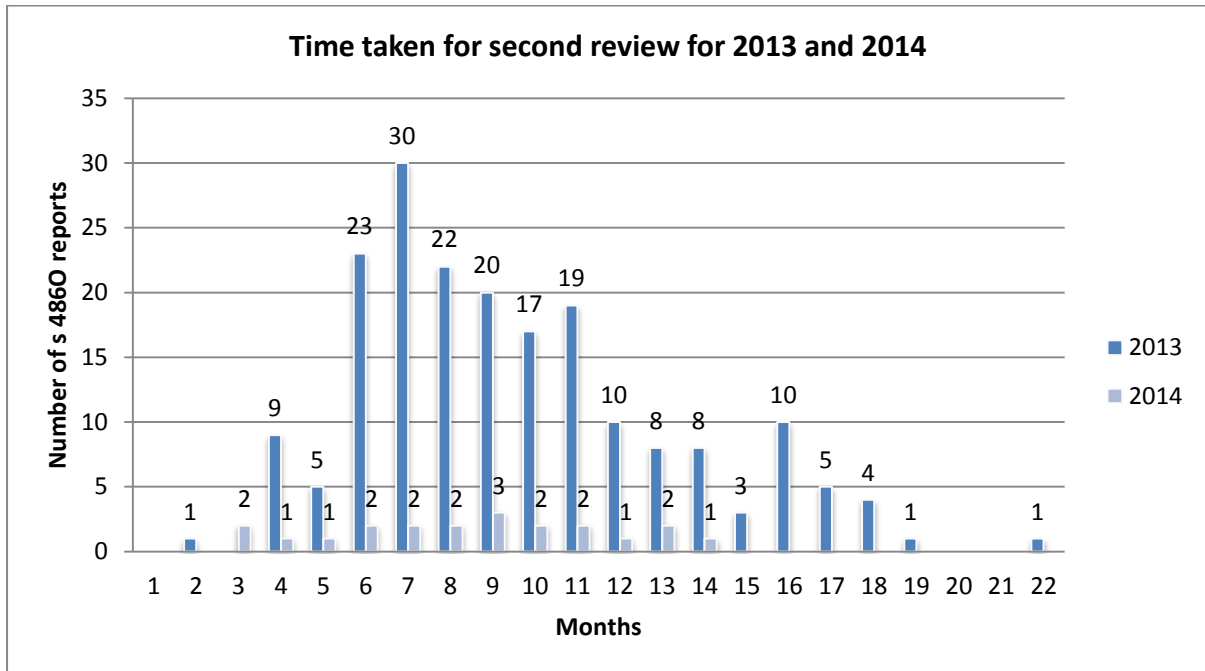
Figure 22 shows the time taken for the first review outcomes as a percentage.

**Fig 22**



Of those 100 who received a negative outcome, 25 sought a second review. These second reviews took a number of different forms. In some instances the department initiated its own reconsideration of the first review decision or was directed to reconsider its decision by the RRT, while some detainees sought judicial review in the Federal Court. The form of the review is not differentiated in figure 23, which shows the time taken from the outcome of the first review to the time of the second review decision.

**Fig 23**



Two received a positive outcome in their second review and 23 received a negative outcome. Four decisions were taken to a third review.

Figure 24 shows the time taken for the second review outcomes as a percentage.

**Fig 24**

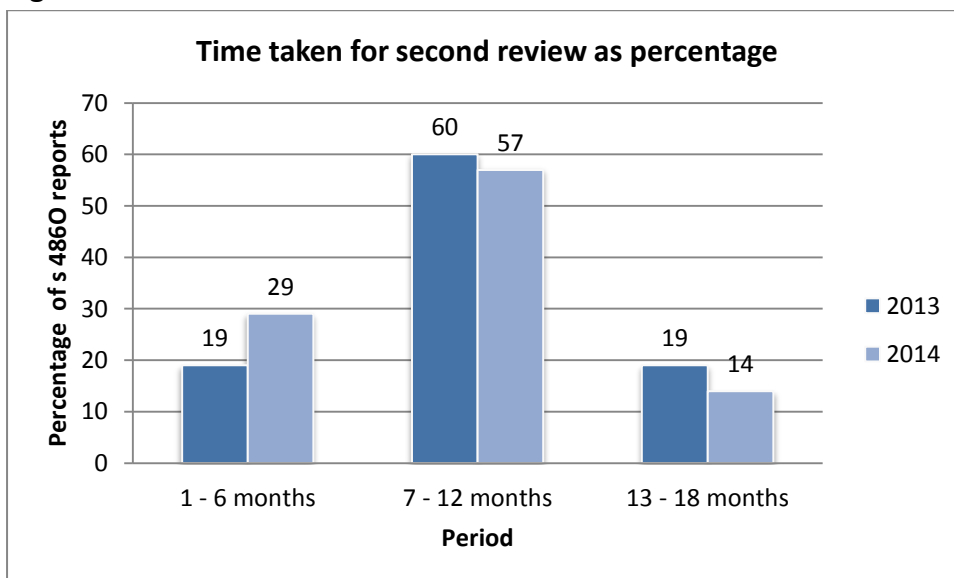


Figure 25 shows the time taken from the outcome of the second review to the time of the third review decision, all of which were a negative outcome for the asylum seeker.

**Fig 25**

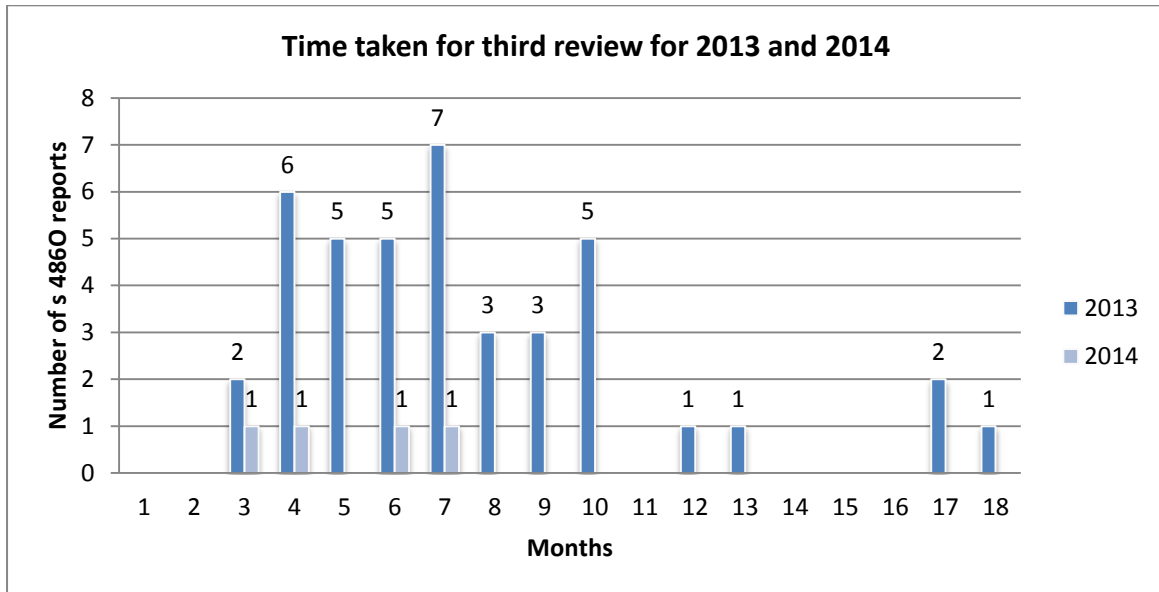


Figure 26 shows the time taken for the third review outcomes as a percentage.

**Fig 26**

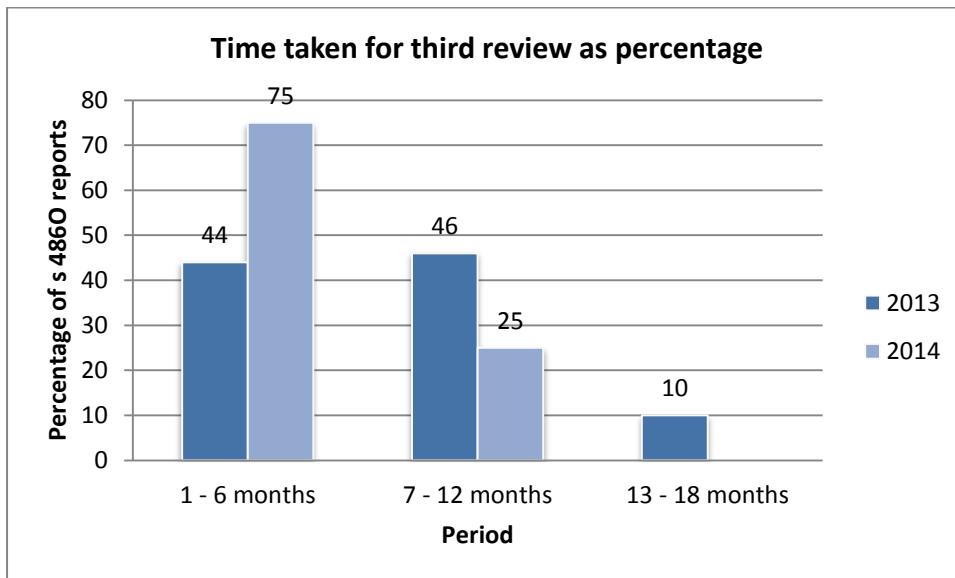
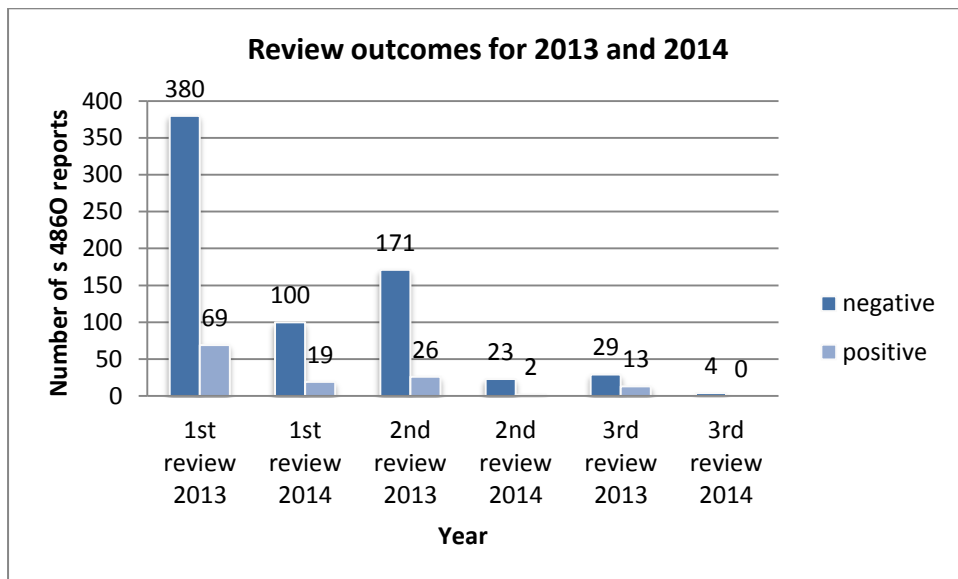


Fig 27 shows the number of positive and negative outcomes for the three stages of review for 2013 and 2014.

**Fig 27**





### Post 13 August 2012 cohort

The Ombudsman reported in a different format for detainees who arrived in Australia after 13 August 2012. The government announced that such people would be transferred to offshore processing centres (OPCs) to have their claims for protection assessed and they would not be considered for resettlement in Australia.

A number of these detainees have not been transferred to OPCs and are residing in community detention in Australia and there has been no processing of their claim for protection. This meant that the usual details that would be included in a s 486N report from the department were not available so an abbreviated form of s 486N report 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 five such reports tabled, and the number who were interviewed, is recorded in the figure 28.

**Fig 28**

