

Our ref: 486N-1001253-O2

21 March 2019

The Hon David Coleman MP
Minister for Immigration, Citizenship and Multicultural Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

Assessments under s 486O of the *Migration Act 1958*

In accordance with s 486O of the *Migration Act 1958* (the Act) I am forwarding my assessment concerning 20 cases on the schedule (Attachment A) regarding 22 individuals who fall within the reporting and assessment obligation imposed by Part 8C of the Act.

My Office has assessed the appropriateness of the immigration detention arrangements of the 20 cases on the schedule and has made a total of nine recommendations in relation to seven cases (Attachment B).

The Act also requires that I prepare a de-identified copy for tabling in the Parliament, which is enclosed.

As part of this assessment my Office reviewed information relating to each individual's case progression, detention placement, legal matters and health and welfare. When required, further information was requested under s 486Q of the Act or s 8 of the *Ombudsman Act 1976*. For the purposes of further assessment, my office conducted interviews with Mr X (1002820-O1) and Mr X (1002953-O).

Yours sincerely



Michael Manthorpe PSM
Commonwealth Ombudsman

Influencing systemic improvement in public administration

SCHEDULE

Assessments of people placed in immigration detention for more than two years

When coming to this assessment, the Office reviewed information relating to each individual's case progression, detention placement, legal matters and health and welfare. Additionally, when required, further information was requested under s 486Q of the Act or s 8 of the *Ombudsman Act 1976*.

No	Ombudsman ID	Recommendations	Name	No. of People	Year of birth	Days in detention ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	1001253-O2	1	Mr X	1	1978	2,187	IDF	27 June 2018 and 21 December 2018	9 May 2018
2	1001665-O3	1	Mr X	1	1990	2,191	IDF	29 June 2018 and 2 January 2019	9 May 2018
3	1002632-O1	1	Mr X	1	1981	1,277	CD	26 March 2018 and 25 September 2018	7 February 2019
4	1002725-O1	0	Mr X	1	1980	1,292	IDF	30 July 2018 and 11 February 2019	9 May 2018
5	1002776-O2	0	Mr X	1	1990	1,095	IDF	4 October 2018	26 November 2018
6	1002792-O1	0	Mr X	1	1973	1,095	IDF	25 October 2018	26 November 2018
7	1002803-O2	0	Mr X	1	1989	1,095	IDF	21 November 2018	25 June 2018
8	1002820-O1	0	Mr X	1	1972	1,089	RSV	25 June 2018 and 18 December 2018	25 June 2018
9	1002821-O1	0	Mr X	1	1974	1,095	IDF	25 June 2018 and 24 December 2018	25 June 2018
10	1002878-O	1	Mr X (husband) Ms X (wife) Miss X (daughter)	3	1988 1992 2016	912 912 908	CD CD CD	17 April 2018 and 16 October 2018	First Assessment
11	1002879-O1	0	Mr X	1	1986	912	IDF	15 October 2018	13 February 2019
12	1002892-O	2	Ms X	1	1968	914	IDF	30 April 2018 and 29 October 2018	First Assessment
13	1002901-O	1	Mr X	1	1987	914	IDF	16 May 2018 and 12 November 2018	First Assessment
14	1002915-O	2	Mr X	1	1979	912	IDF	31 May 2018 and 29 November 2018	First Assessment
15	1002927-O	0	Mr X	1	1990	912	IDF	13 June 2018 and 17 December 2018	First Assessment
16	1002953-O	0	Mr X	1	1973	912	IDF	3 August 2018 and 1 February 2019	First Assessment
17	1002972-O	0	Mr X	1	1974	730	Removed	6 September 2018	First Assessment
18	1002979-O	0	Mr X	1	1986	732	IDF	2 October 2018	First Assessment
19	1002983-O	0	Mr X	1	1979	731	IDF	8 October 2018	First Assessment
20	1003003-O	0	Mr X	1	1989	730	IDF	16 November 2018	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Removed, Resolution of Status visa (RSV).

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO
THE MINISTER FOR HOME AFFAIRS**

Under s 486O of the Migration Act 1958

Name	Mr X
Ombudsman ID	1001253-02
<p>Mr X was detained in May 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than five years.</p> <p>In September 2016 Mr X's Temporary Protection visa (TPV) application was refused. In April 2017 the Administrative Appeals Tribunal remitted Mr X's case to the Department of Home Affairs (the Department) for reconsideration with the direction that Mr X's case satisfies the complementary criterion under s 36(2)(aa) of the <i>Migration Act 1958</i>.</p> <p>In October 2017 Mr X was issued with a Notice of Intention to Consider Refusal of his TPV under s 501. At the time of the Department's latest report dated 21 December 2018 Mr X's TPV continued to be considered for refusal.</p> <p>On 21 December 2018 the Department advised that it was preparing a submission to the Minister which will brief him on a number of long-term detention cases and give him an opportunity to indicate if he is willing to consider the cases on an individual basis. Mr X's case is included in that submission.</p> <p>International Health and Medical Services (IHMS) has advised that Mr X required ongoing treatment for complex mental health concerns. A treating psychologist reported in April 2017 that Mr X's mental condition would improve if he was transferred to a less restrictive environment. In May 2018 an IHMS counsellor noted that Mr X continued to experience detention fatigue and stress.</p> <p>In November 2018 an IHMS Area Medical Director reviewed and approved a recommendation for Mr X to be transferred to Facility Y so he can be closer to his support network.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Department consider transferring Mr X to Facility Y to enable him to reside closer to his support network.	

Name	Mr X
Ombudsman ID	1001665-03
<p>Mr X was detained in January 2013 after arriving in Australia by sea and has been held in an immigration detention facility for more than six years.</p> <p>In July 2016 Mr X's Safe Haven Enterprise visa application was refused. The Immigration Assessment Authority affirmed the refusal decision in September 2016. Applications for judicial review with the Federal Circuit Court and Federal Court were dismissed in March 2017 and August 2017 respectively.</p> <p>In December 2017 the Department of Home Affairs (the Department) advised that Mr X had no matters before the Department, the courts or tribunals and was on an involuntary removal pathway.</p> <p>The Department advised on 2 January 2019 that it has not been able to obtain travel documents to progress the removal of Mr X to Country A. The Department is unable to provide timeframes for obtaining travel documents due to the identity verification processes in Country A.</p> <p>On 2 January 2019 the Department advised that it was preparing a submission to the Minister which will brief him on a number of long-term detention cases and give him an opportunity to indicate if he is willing to consider the cases on an individual basis. Mr X's case is included in that submission.</p> <p>International Health and Medical Services (IHMS) advised that Mr X received ongoing treatment for mental health concerns. In March 2018 Mr X was assessed as being at a low risk of self-harm or harm to others. In July 2018 the IHMS mental health team noted that Mr X may become vulnerable with extended time in detention and distance from his family.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X's case be assessed against the guidelines under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa, given the significant length of time he has remained in detention and the absence of any recent behavioural or security concerns.	

Attachment B

Name	Mr X
Ombudsman ID	1002632-O1
<p>Mr X was detained in September 2013 after arriving in Australia by sea. He has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than three and a half years.</p> <p>Mr X was transferred to a Regional Processing Country and returned to Australia for medical treatment. The Department of Home Affairs (the Department) advised that because Mr X arrived after 19 July 2013 he remains liable for transfer back to a Regional Processing Country on completion of his treatment.</p> <p>The Department advised that Mr X has undergone a Refugee Status Determination and has been found to be a refugee.</p> <p>The Department further advised that Mr X is a plaintiff in ongoing court proceedings in Australia.</p> <p>International Health and Medical Services advised that Mr X received ongoing treatment for complex physical health concerns.</p> <p>The Ombudsman notes with concern that Mr X is likely to remain in immigration detention for a prolonged period. This poses a significant risk to his health and welfare.</p> <p>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore all available options to address the prolonged detention of Mr X.	

Attachment B

Name	Mr X and family
Ombudsman ID	1002878-O
<p>Mr X, Ms X and their daughter were detained in September 2013 after arriving in Australia by sea. They have remained in immigration detention, in a detention facility and the community, for a cumulative period of more than two and a half years. Mr X and Ms X have a son who was born in Australia in 2018. He is not yet subject to reporting under s 486N of the <i>Migration Act 1958</i>.</p> <p>The family was transferred to a Regional Processing Country and returned to Australia for medical treatment. The Department of Home Affairs (the Department) advised that because the family arrived after 19 July 2013 they remain liable for transfer back to a Regional Processing Country on completion of their treatment.</p> <p>The Department advised that the family have undergone a Refugee Status Determination and have been found to be refugees.</p> <p>The Department further advised that the family will not be considered for the grant of Final Departure Bridging visas under s 195A while they have children under the age of five requiring parental care.</p> <p>International Health and Medical Services (IHMS) advised that Ms X required treatment for complex mental health concerns. IHMS further noted that the family's health and welfare was at significant risk of deterioration if returned to a Regional Processing Country.</p> <p>The Ombudsman notes with concern that the family is likely to remain in immigration detention for a prolonged period. This poses a significant risk to their health and welfare.</p> <p>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore all available options to address the prolonged detention of Mr X, Ms X and their daughter.	

Attachment B

Name	Ms X
Ombudsman ID	1002892-O
<p>Ms X was detained in April 2016 following the cancellation of her bridging visa under s 116 of the <i>Migration Act 1958</i>. She has remained in an immigration detention facility for more than two and a half years.</p> <p>Ms X lodged a Protection visa application in November 2012. The application was refused in March 2013 and the refusal was affirmed by the Refugee Review Tribunal in December 2013. The Federal Circuit Court dismissed Ms X's application for judicial review in August 2015 and she withdrew a further appeal to the Federal Court in November 2015.</p> <p>In April 2016 Ms X's bridging visa was cancelled under s 116 after the Department of Home Affairs (the Department) became aware of a warrant issued by the authorities of Country A for prosecution of criminal offences.</p> <p>In February 2017 an International Treaties Obligations Assessment determined that Ms X was a person in respect of whom Australia owes <i>non-refoulement</i> obligations.</p> <p>In June 2017 Ms X was found to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.</p> <p>In December 2017 Ms X's case was referred on a ministerial submission under s 48B to allow her to apply for a temporary visa.</p> <p>In October 2018 the Department advised that Ms X's case was placed on hold and she was not being considered for referral to the Minister under ss 195A or 48B at that time as her case was deemed to be affected by case law in relation to s 197C.</p> <p>In January 2019 the Department advised that it had reviewed Ms X's case and concluded that she is no longer considered to be affected by s 197C. The Department advised that Ms X was therefore being assessed against the s 195A guidelines and a ministerial submission under s 48B would be drafted at the earliest practicable date.</p> <p>International Health and Medical Services advised that Ms X presented with situational stress in the context of her prolonged detention.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Department refer Ms X's case to the Minister for consideration under s 195A for the grant of a bridging visa.2. The Department expedite its preparation of a ministerial submission under s 48B to allow Ms X to apply for a temporary protection visa.	

Attachment B

Name	Mr X
Ombudsman ID	1002901-O
<p>Mr X was detained in February 2013 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>Mr X was granted bridging visas in March 2013 and August 2015. He was re-detained in December 2014 following the cancellation of his bridging visa under s 116 of the <i>Migration Act 1958</i> following criminal charges. He was granted further bridging visas in October 2015 and February 2016 and was re-detained in April 2017 following further criminal charges. Mr X was issued fines and was directed to enter into a good behaviour bond.</p> <p>Mr X lodged a Safe Haven Enterprise visa application in September 2015 that was refused in May 2016. The Immigration Assessment Authority (IAA) affirmed the refusal in July 2016. Mr X lodged an application for judicial review of the IAA's decision and a hearing was scheduled for November 2019.</p> <p>In May 2018 Mr X was identified for assessment against the guidelines under s 195A for the grant of a bridging visa.</p> <p>On 12 November 2018 the Department of Home Affairs advised that Mr X is not being considered for removal as involuntary removal is not possible at present due to instability in Country A.</p> <p>International Health and Medical Services advised that Mr X attended counselling and was prescribed with medication for mental health concerns in the context of his detention.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X's case be assessed against the s 195A guidelines for the grant of a bridging visa given the absence of any recent security or behavioural concerns.	

Attachment B

Name	Mr X
Ombudsman ID	1002915-0
<p>Mr X was detained in May 2016 following his release from a correctional facility and has remained in an immigration detention facility for more than two and a half years.</p> <p>Mr X's visa was mandatorily cancelled under s 501(3A) of the <i>Migration Act 1958</i> in February 2015 following criminal convictions. The Assistant Minister decided not to revoke the cancellation decision in January 2017 and the Administrative Appeals Tribunal affirmed the decision in August 2018. Mr X lodged an application for judicial review at the Federal Court and the matter was adjourned in November 2018.</p> <p>In August 2017 Mr X was found to engage Australia's protection obligations. His Protection visa application was refused on the basis that he was found to constitute a danger to the Australian community due to his criminal history.</p> <p>International Health and Medical Services (IHMS) advised that Mr X received treatment and ongoing monitoring for complex mental health concerns. Mr X was admitted to hospital and referred for emergency review on multiple occasions due to deterioration in his mental health and non-compliance with prescribed medication.</p> <p>Treating psychiatrists reported that Mr X's immigration detention was detrimental to his mental health and recommended that Mr X be released into the community where he could continue his treatment. A treating psychiatrist advised that continuing treatment in the community would provide a more conducive environment for Mr X's recovery and stability in his mental state.</p> <p>Mr X's medication was adjusted in August 2018 and in September 2018 a psychiatrist reported that his mental state had significantly improved. At the time of IHMS's latest report Mr X continued to engage with the mental health team for supportive counselling and follow-up reviews.</p> <p>The Department of Home Affairs advised that Mr X's case was referred for assessment against the s 195A guidelines in October 2018 given the significant improvement in his mental health.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. If Mr X is not granted a bridging visa, Mr X's case be referred to the Minister for consideration under s 197AB for the grant of a community placement in close proximity to his family.2. If a bridging visa or community placement are not deemed appropriate in light of Mr X's criminal history, the Department explore placement options that more appropriately manage the treatment of Mr X's mental health concerns.	