

Our ref: 486N-1000857-03

22 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 23 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 three recommendations in relation to three 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*.

I note Mr X's (1002373-04) removal is likely to be protracted because involuntary removal to Country A is not currently possible. I also note his protracted removal and continued placement in immigration detention poses a risk to his physical and mental health.

Mr X's (1000857-03) visa was cancelled under s 501 of the Act. Mr X has no ongoing matters before the Department, the courts or tribunals and is on an involuntary removal pathway. Given the nature of his criminal offences, I do not consider it is appropriate to make a recommendation in relation to the grant of a bridging visa or a community placement at this time. However, I note the obstacles applying to his removal from Australia are likely to result in a prolonged placement in immigration detention, which in turn poses a serious risk to his physical and mental health.

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	1000857-O3	0	Mr X	1	1971	2,748	IDF	9 July 2018 and 15 January 2019	25 June 2018
2	1001736-O3	0	Mr X	1	1976	2,009	IDF	22 October 2018	26 November 2018
3	1002201-O4	0	Mr X	1	2001	2,009	CD	29 October 2018	13 February 2019
4	1002373-O4	0	Mr X	1	1986	1,645	IDF	15 October 2018	26 November 2018
5	1002810-O2	0	Mr X	1	1974	1,095	IDF	12 December 2018	Awaiting Tabling
6	1002854-O	0	Mr X	1	1987	912	IDF	5 March 2018 and 3 September 2018	First Assessment
7	1002869-O	1	Ms X Mr X Miss X Miss X	4	1989 1981 2007 2016	913 906 906 865	CD CD CD CD	9 April 2018, 21 May 2018 and 2 October 2018	First Assessment
8	1002899-O1	0	Mr X	1	1989	913	IDF	5 November 2018	21 February 2019
9	1002912-O1	1	Mr X	1	1995	914	IDF	26 November 2018	Awaiting Tabling
10	1002939-O	0	Mr X	1	1968	912	IDF	9 July 2018 and 7 January 2019	First Assessment
11	1002952-O	0	Mr X	1	1979	912	IDF	1 August 2018 and 30 January 2019	First Assessment
12	1002977-O	0	Mr X	1	1969	730	Removed	25 September 2018	First Assessment
13	1002978-O	0	Mr X	1	1974	733	Removed	28 September 2018	First Assessment
14	1002982-O	0	Mr X	1	1974	730	IDF	5 October 2018	First Assessment
15	1002999-O	0	Mr X	1	1980	731	IDF	12 November 2018	First Assessment
16	1003010-O	0	Mr X	1	1970	912	Removed	13 December 2018	First Assessment
17	1003012-O	0	Mr X	1	1976	730	Removed	29 November 2018	First Assessment
18	1003016-O	0	Mr X	1	1996	731	IDF	3 December 2018	First Assessment
19	1003017-O	1	Mr X	1	1983	730	IDF	5 December 2018	First Assessment
20	1003027-O	0	Mr X	1	1995	730	IDF	19 December 2018	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Removed.

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO
THE MINISTER FOR HOME AFFAIRS**
Under s 486O of the Migration Act 1958

Name	Mr X and family
Ombudsman ID	1002869-O
<p>Mr X, Ms X and their two daughters were detained in July 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.</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 Mr X, Ms X and their eldest daughter have undergone a Refugee Status Determination and have been found to be refugees.</p> <p>International Health and Medical Services (IHMS) advised that the family required treatment for significant mental health concerns. IHMS further noted that Mr X and Ms X's mental health was exacerbated by concerns about their future and the uncertainty of their immigration status.</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 daughters.	

Name	Mr X
Ombudsman ID	1002912-01
<p>Mr X was detained in April 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two and a half years.</p> <p>Mr X was granted a bridging visa in March 2015. Mr X's bridging visa was cancelled under s 116 of the <i>Migration Act 1958</i> in December 2016 following criminal convictions.</p> <p>In August 2017 Mr X's Safe Haven Enterprise visa (SHEV) application was refused and in November 2017 the Immigration Assessment Authority affirmed the SHEV refusal decision.</p> <p>In November 2018 the Federal Circuit Court (FCC) determined that Mr X's case was affected by another case³ which declared that the purported appointment of a port as a proclaimed port within the Territory of Ashmore and Cartier Islands was invalid. As a result, the FCC declared that Mr X is not an 'unauthorised maritime arrival' and had not been correctly notified of the refusal of his SHEV application under s 66.</p> <p>The Department of Home Affairs' (the Department) report, dated 26 November 2018, advised that the Department was in the process of correctly notifying Mr X of his SHEV refusal and his eligibility to have the refusal decision reviewed by the Administrative Appeals Tribunal.</p> <p>International Health and Medical Services advised that Mr X received treatment for ongoing mental health concerns. The mental health team advised that Mr X's mental health concerns relate to his ongoing detention and uncertain future.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Minister consider Mr X's case under s 195A for the grant of a bridging visa.	

³ *DBB16 v Minister for Immigration and Border Protection* [2018] FCAFC 178.

Attachment B

Name	Mr X
Ombudsman ID	1003017-0
<p>Mr X was detained in June 2012 after arriving in Australia by sea. Mr X was granted a bridging visa in October 2012 and remained in the community until he was re-detained in March 2017 following criminal offences. He has remained in an immigration detention facility for a cumulative period of more than two years.</p> <p>Mr X lodged a Protection visa application in November 2012 which was refused in January 2014. In February 2015 the Refugee Review Tribunal affirmed the refusal decision. Mr X has no ongoing matters before the Department of Home Affairs (the Department), tribunals or the courts and is on an involuntary removal pathway.</p> <p>The Department advised that Mr X's removal is protracted due to difficulties associated with obtaining a travel document from the authorities of Country A, as Mr X lived in Country B for an extended period. The Department is exploring other options for Mr X, including a referral to the Minister under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa or a Final Departure Bridging visa.</p> <p>International Health and Medical Services advised that Mr X currently has no significant physical or mental health issues requiring treatment.</p> <p>The Ombudsman notes with concern the government's duty of care to detainees and the risk to physical and mental health prolonged immigration detention may pose.</p> <p>Mr X has remained in detention for a significant length of time with no recent behavioural or security concerns.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Minister consider Mr X's case under s 195A for the grant of a bridging visa or a Final Departure Bridging visa.	