

Our ref: 486N-1000875-O3

25 July 2019

The Hon David Coleman MP
Minister for Immigration, Citizenship, Migrant Services 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 of 10 cases on the schedule (Attachment A) regarding 10 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 10 cases on the schedule and has made a total of nine recommendations in relation to five cases (Attachment B).

The Act also requires that I prepare this de-identified statement for tabling in Parliament.

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 two individuals on the schedule, Ms X (1002636-O1) and Mr X (1002966-O1).

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. When required, further information was requested under s 486Q of the Act or s 8 of the *Ombudsman Act 1976*.

No	Ombudsman ID	Recs	Comments	Name	No. of People	Year of birth	Days in detention ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	1000875-O3	N	N	Mr X	1	1966	2,748	IDF	6 February 2019	26 November 2018
2	1001250-O2	N	N	Mr X	1	1957	2,199	IDF	20 August 2018 and 27 February 2019	18 June 2018
3	1001280-O2	2	N	Mr X	1	1990	2,191	IDF	15 August 2018 and 14 February 2019	18 June 2018
4	1002536-O1	N	N	Mr X	1	1986	1,095	IDF	7 February 2019	29 November 2017
5	1002636-O1	2	N	Ms X	1	1969	1,465	IDF	30 March 2018, 1 October 2018 and 5 April 2019	21 March 2018
6	1002647-O2	N	N	Mr X	1	1967	1,467	IDF	30 April 2019	4 July 2019
7	1002759-O1	1	N	Mr X	1	1987	1,282	IDF	10 September 2018 and 14 March 2019	25 June 2018
8	1002846-O	3	N	Ms X	1	1983	1,103	CD	26 February 2018, 27 August 2018 and 4 March 2019	First Assessment
9	1002966-O1	N	N	Mr X	1	1986	912	IDF	28 February 2019	Awaiting Tabling
10	1003081-O	1	N	Mr X	1	1932	730	IDF	29 March 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF) and Community Placement (CD).

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO
THE MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS**
Under s 486O of the Migration Act 1958

Name	Mr X
Ombudsman ID	1001280-O2
<p>Mr X was detained in December 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than six years.</p> <p>Mr X was transferred to a Regional Processing Country (RPC) in January 2013 and was returned to Australia for medical treatment in March 2013.</p> <p>The Department of Home Affairs' (the Department) advised that as Mr X is part of the cohort who were transferred to an RPC between 13 August 2012 and 19 July 2013 and were returned to Australia, his case falls within the definition of a fast track applicant under s 5(1) of the <i>Migration Act 1958</i> and Mr X will not be returned to an RPC.</p> <p>In September 2016 Mr X's Safe Haven Enterprise Visa application was refused and in November 2016 the Immigration Assessment Authority affirmed the refusal.</p> <p>Mr X's applications for judicial review by the Federal Circuit Court and the Full Federal Court were dismissed.</p> <p>The Department's report of 14 February 2019 advised that Mr X had no outstanding matters before the Department, tribunals or the courts and was on an involuntary removal pathway.</p> <p>The Department's report advised that Mr X does not have a valid travel document and is unwilling to return to Country A voluntarily. The authorities of Country A are currently not cooperating with the involuntary return of its citizens and as a result Mr X's removal is likely to be protracted.</p> <p>The Department's report further advised that in October 2018 Mr X's case was referred to the Minister for consideration under s 195A and s 46A for the grant of a bridging visa and to allow Mr X to lodge further bridging visa applications.</p> <p>The Ombudsman's previous assessment recommended, in light of the significant length of time Mr X has remained in immigration detention, he be considered under s 195A for the grant of a bridging visa.</p> <p>On 18 June 2018 the Minister advised in a tabling statement that he had considered Mr X's case under s195A for the grant of a bridging visa and declined to intervene.</p> <p>The International Health and Medical Services (IHMS) report stated that Mr X received treatment for complex mental health concerns.</p> <p>A treating psychologist reported in January 2019 that in terms of future prospects for recovery, the stressors associated with the detention environment will continue to negatively impact on Mr X's psychological, emotional and physical health. IHMS advised that this recommendation was approved by the IHMS Medical Director on 20 February 2019.</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>The Ombudsman notes the significant length of time Mr X has remained in detention, the likely protracted nature of his removal and the absence of any recent security concerns.</p>	

Attachment B

Name	Mr X
Ombudsman ID	1001280-O2
Recommendation	
The Ombudsman recommends that:	
<ol style="list-style-type: none">1. The Department consider Mr X's case for a Tier 4 specialised detention placement in light of his significant mental health concerns and the advice from the treating psychologist.2. Consideration of Mr X's case be expedited under s 195A for the grant of a bridging visa and under s 46A to lift the bar to allow Mr X to lodge further bridging visa applications.	

Name	Ms X
Ombudsman ID	1002636-01
<p>Ms X was detained in April 2015 following her release from a correctional facility and has remained in an immigration detention facility for more than four years.</p> <p>In October 2016 Ms X's Protection visa application was refused under s 501 of the <i>Migration Act 1958</i>. In January 2017 the Administrative Appeals Tribunal (AAT) set aside the decision and remitted the matter for reconsideration with the direction that Ms X is owed <i>non-refoulement</i> obligations.</p> <p>In January 2018 the Minister set aside the AAT's decision and substituted it with a decision to refuse Ms X's Protection visa application. In June 2018 the Federal Court (FC) set aside the Minister's decision and remitted the matter for reconsideration according to law.</p> <p>In February 2019 the Full Federal Court (FFC) dismissed Ms X's appeal of the FC's rejection of her other ground of review. The FFC allowed the Minister's cross-appeal of the FC's finding of an error of law in refusing Ms X's Protection visa application.</p> <p>The International Health and Medical Services (IHMS) reports advised that Ms X received treatment for complex mental health concerns and concluded that Ms X's detention placement was adversely affecting her mental health.</p> <p>In November 2017 and March 2019 a treating psychiatrist, general practitioner and IHMS Medical Director recommended that Ms X be transferred to Facility Z to be closer to her family for the benefit of her mental health.</p> <p>The Department of Home Affairs' (the Department) reports of 1 October 2018 and 5 April 2019 advised that Ms X's detention placement at Facility Y was appropriate due to her criminal history, behavioural concerns and for operational reasons.</p> <p>The Department's report of 5 April 2019 advised that Ms X's case was identified to be affected by the implications of an FC decision.¹ Subsequently, Ms X's case was referred to the Minister for consideration under ss 195A and 197AB for the grant of a bridging visa or community placement.</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 Ms X to Facility Z so she can reside closer to her family. 2. If the Minister intervenes in Ms X's case under s 197AB, Ms X be placed at a community placement address in close proximity to her family in City A. 	

¹ *DMH16 v Minister for Immigration and Border Protection* [2017] FCA 448.

Name	Mr X
Ombudsman ID	1002759-O1
<p>Mr X was detained in July 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than three and a half years.</p> <p>In March 2013 Mr X's Protection visa application was refused and in May 2013 the Refugee Review Tribunal (RRT) affirmed the decision.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court (FCC). In October 2016 the FCC quashed the RRT decision and ordered the matter be reconsidered according to law. In January 2017 the Administrative Appeals Tribunal's reconsideration affirmed the refusal.</p> <p>Mr X's applications for judicial review in the FCC and the Federal Court were unsuccessful.</p> <p>The Department of Home Affairs' (the Department) report of 14 March 2019 advised that Mr X had no outstanding matters before the Department, tribunals or the courts and was identified for involuntary removal. The Department's report further advised that his removal was expected to be protracted as there can be a delay in the issuance of travel documents from the authorities of Country A.</p> <p>The Department's report advised that in February 2019 Mr X's case was identified for assessment against the guidelines under s 195A for a referral to the Minister for consideration to grant Mr X a bridging visa.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for physical and mental health concerns.</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 referred to the Minister for consideration under s 195A for the grant of a bridging visa.	

Name	Ms X
Ombudsman ID	1002846-O
<p>Ms X was detained in September 2013 after arriving in Australia by sea. She has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than three years.</p> <p>Ms X was transferred to a Regional Processing Country (RPC) and returned to Australia for supportive purposes in relation to another detainee's medical treatment. Following her temporary transfer Ms X married another individual in detention, Mr X. Their child was born in Australia and is not yet subject to reporting under s 486N of the <i>Migration Act 1958</i>. Mr X was voluntarily removed from Australia in February 2018.</p> <p>The Department of Home Affairs' (the Department) report advised that as Ms X arrived after 19 July 2013 she and her child remain liable for transfer back to an RPC on completion of her treatment.</p> <p>The Department's report advised that Ms X has undergone a Refugee Status Determination by the Government of an RPC and has been found to be a refugee.</p> <p>The Department's report further advised that while her child is under the age of five and is not yet attending school, and in light of the vulnerabilities associated with her medical conditions, Ms X will not be considered for the grant of a Final Departure Bridging visa under s 195A.</p> <p>The International Health and Medical Services (IHMS) report advised that Ms X received treatment for complex physical and mental health concerns.</p> <p>IHMS advised that Ms X's everyday activities, such as attending appointments, shopping and commuting by public transport, were becoming increasingly challenging due to her physical health issues. Treating medical practitioners recommended that Ms X be provided with practical support in the community and be able to visit her husband's family for respite and support.</p> <p>The Department's report advised that Ms X's requests to host her husband's family at her residence and to visit her husband's family at their residence were refused in April 2018 and August 2018. The Department's report further advised that Ms X has been referred for material and practical assistance in caring for her child.</p> <p>The Ombudsman notes with concern that Ms X's ongoing uncertainty about her immigration status, as well as the impact of family separation due to her husband's removal from Australia, poses a significant risk to her health and welfare.</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 to vary her community placement address under s 197AD to enable Ms X and her child to be closer to their support network, specifically her husband's family, for the benefit of their health and welfare. 2. If Ms X's community placement address is not varied, the Department allow Ms X and her child to visit her husband's family or for her husband's family to visit her at her residence for support and respite through a temporary stay arrangement. 3. The Department explore options to address the prolonged detention of Ms X and her child. 	

Name	Mr X
Ombudsman ID	1003081-O
<p>Mr X was detained in March 2017 following his release from a correctional facility and has remained in an immigration detention facility for more than two years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in August 2016 following criminal convictions. In September 2016 Mr X lodged a request for revocation of the cancellation of his visa. In November 2017 a delegate of the Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>The Department of Home Affairs' (the Department) report advised that Mr X was placed on a removal pathway. However Mr X's removal was cancelled in March 2018 because he lodged a Protection visa application on the basis of medical and socio-economic related claims.</p> <p>In March 2018 Mr X's Protection visa application was refused and in August 2018 the Administrative Appeals Tribunal (AAT) affirmed the refusal. The Federal Circuit Court affirmed the AAT's decision. In March 2018 Mr X lodged an application for judicial review in the Federal Court and the matter is yet to be scheduled for hearing.</p> <p>The Department's report advised that Mr X remains in an immigration detention facility because, due to his criminal history, he has been assessed as a risk to the community.</p> <p>The International Health and Medical Services (IHMS) report stated that Mr X received treatment for complex physical and mental health concerns.</p> <p>IHMS advised that Mr X's current immigration detention placement is likely to adversely affect his medical conditions and that he should be managed in the community.</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, in consultation with IHMS, consider an alternative type of accommodation that provides Mr X with the appropriate level of support and assistance, in light of the vulnerabilities associated with his medical condition.	