

Our ref: 486N-000090-O

26 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 11 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 five recommendations in relation to five cases (Attachment B).

The Act also requires that I prepare this de-identified copy for tabling in the 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 an interview with one individual on the schedule, Mr X (1002499-O2).

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 <sup>1</sup>	Detention status <sup>2</sup>	Date of 486N report	Date last assessment tabled
1	000090-O	N	N	Mr X	1	1973	1,283	IDF	15 November 2018 and 22 May 2019	14 May 2008
2	1000940-O2	N	N	Mr X	1	1980	2,565	TPV	20 August 2018 and 25 February 2019	25 June 2018
3	1001842-O3	N	N	Mr X	1	1983	2,194	Removed	24 September 2018 and 28 March 2019	26 November 2018
4	1001947-O2	1	N	Mr X	1	1983	2,018	IDF	6 August 2018 and 13 February 2019	9 May 2018
5	1002499-O2	1	N	Mr X	1	1991	1,652	IDF	10 September 2018 and 18 March 2019	18 June 2018
6	1002528-O2	1	N	Ms X Mr X (son)	2	1969 1999	1,647 1,647	CD CD	11 April 2018, 18 October 2018 and 17 April 2019	9 May 2018
7	1002880-O	1	N	Ms X	1	1989	1,095	CD	17 April 2018, 16 October 2018 and 17 April 2019	First Assessment
8	1002959-O	N	N	Mr X	1	1989	918	IDF	17 August 2018 and 21 February 2019	First Assessment
9	1002985-O1	1	N	Mr X	1	1984	912	IDF	10 April 2019	Awaiting Tabling
10	1003063-O	N	N	Mr X	1	1942	735	IDF	4 March 2019	First Assessment

<sup>1</sup> At date of the Department's latest report.

<sup>2</sup> Immigration Detention Facility (IDF), Community Placement (CD), Bridging visa (BV), Temporary Protection visa (TPV), Removed.

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO  
THE MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS**

*Under s 486O of the Migration Act 1958*

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1001947-O2
<p>Mr X was detained in August 2013 after arriving in Australia by sea and has remained in immigration detention, in a detention facility and the community, for more than five and a half years.</p> <p>In August 2016 Mr X's Safe Haven Enterprise visa application was refused and in October 2016 the Immigration Assessment Authority affirmed the refusal.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court and the matter was dismissed in December 2018.</p> <p>The Department of Home Affairs' (the Department) report of 13 February 2019 advised that Mr X had no outstanding matters before the Department, tribunals or 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 of 13 February 2019 further advised the Department was preparing a submission for the Minister, briefing him on a number of long-term detention cases, including Mr X's. The submission will give the Minister an opportunity to indicate whether he is willing to consider those cases on an individual basis.</p> <p>The International Health and Medical Services report stated that Mr X received treatment for complex physical and mental health concerns.</p> <p>The Department's report of 1 February 2018 advised that Mr X's previous community placement was revoked in August 2017 under s 197AD of the <i>Migration Act 1958</i>. This was due to Mr X's escalating behaviour and the inability of the Department to manage his needs and behaviour.</p> <p>The Ombudsman's previous assessment recommended the Department consider alternative detention placement options for Mr X in light of his complex health and behavioural issues.</p> <p>On 9 May 2018 the Minister advised in a tabling statement that Mr X's needs were appropriately managed and supported in an immigration detention facility. The Minister further advised that, should Mr X's medical circumstances change, alternative arrangements may be considered.</p> <p>IHMS advised that in October 2018 a psychiatrist recommended an occupational therapy assessment of Mr X's functional abilities be conducted if community release was considered again.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"> <li>1. The Department, in consultation with IHMS, consider Mr X's case for a Tier 4 specialised detention placement or a community placement with appropriate supports in place in light of his significant medical conditions and the advice from his treating psychiatrist.</li> </ol>	



Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002499-02
<p>Mr X was detained in September 2014 following the cessation of his visa and has remained in an immigration detention facility for more than four and a half years.</p> <p>In December 2014 Mr X's Protection visa application was refused and in April 2015 the Refugee Review Tribunal (RRT) affirmed the refusal.</p> <p>In December 2017 Mr X was found to meet the guidelines under s 195A of the <i>Migration Act 1958</i> for consideration for the grant of a Final Departure Bridging visa. In March and December 2018 the Minister declined to consider intervention under s 195A.</p> <p>In March 2019 the Federal Circuit Court dismissed Mr X's application for judicial review of the RRT's decision. During an interview with Ombudsman staff, Mr X advised he had subsequently lodged an application for judicial review in the Federal Court.</p> <p>The International Health and Medical Services report stated that Mr X received treatment for mental health concerns. During an interview with Ombudsman staff, Mr X advised his mental health was worsening and he was experiencing nightmares.</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 also notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"><li>1. Mr X's case again be referred to the Minister for consideration under s 195A for the grant of a bridging visa.</li></ol>	

<b>Name</b>	Ms X Mr X (son)
<b>Ombudsman ID</b>	1002528-O2
<p>Ms X and her son, Mr X, were detained in August 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 four and a half years.</p> <p>Ms X and Mr X were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. The Department of Home Affairs' (the Department) report advised that as Ms X and Mr X arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their treatment.</p> <p>The Department's report advised that Ms X and Mr X have undergone a Refugee Status Determination by the Government of an RPC and were found to be refugees.</p> <p>The Department's report further advised that the Department intends to review the transitory cohort to identify cases who could support themselves in the community until they depart Australia through the grant of Final Departure Bridging visas (FDBV). The Department's report advised that, with the exception of detainees who are most vulnerable and/or present a security risk, individuals and family groups will be referred to the Minister for consideration under s 195A of the <i>Migration Act 1958</i>. The Department will review Ms X and Mr X's case in accordance with these processes and, if found to meet the prescribed requirements, refer them for consideration under s 195A for the grant of FDBVs.</p> <p>The International Health and Medical Services report advised that Ms X and Mr X received treatment for physical and mental health concerns.</p> <p>The Ombudsman notes with concern that the family's ongoing uncertainty about their immigration status poses a significant risk to their health and welfare.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> <li>1. Explore options to address the prolonged detention of Ms X and Mr X.</li> </ol>	

Attachment B

<b>Name</b>	Ms X
<b>Ombudsman ID</b>	1002880-O
<p>Ms X was detained in September 2013 after arriving in Australia by sea with her husband, Mr X. 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 and her husband were transferred to a Regional Processing Country (RPC) and returned to Australia for urgent medical treatment for Mr X who subsequently died in April 2016.</p> <p>The Department's report advised that as Ms X arrived after 19 July 2013 she remains 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 was found to be a refugee.</p> <p>The Department's report further advised that, in light of the vulnerabilities associated with her mental health, Ms X will not be considered for the grant of a Final Departure Bridging visa under s 195A of the <i>Migration Act 1958</i>.</p> <p>The International Health and Medical Services report advised that Ms X received treatment for complex mental health concerns.</p> <p>The Ombudsman notes with concern that Ms X's ongoing uncertainty about her immigration status poses a significant risk to her health and welfare.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"><li>1. Explore options to address the prolonged detention of Ms X.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002985-01
<p>Mr X was detained in March 2011 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 found to be owed protection through a non-statutory process in September 2012. In October 2012 Mr X was granted a Protection visa and released from immigration detention.</p> <p>Mr X lodged applications for Australian citizenship in April 2016 and October 2016. Both applications were found to be invalid as he did not provide adequate evidence of his identity to meet the requirements of the <i>Australian Citizenship Act 2007</i>.</p> <p>The Department of Home Affairs' (the Department) report of 10 April 2019 advised that Mr X made a third application for citizenship which was refused in June 2016 as he had not held his Protection visa for four years on the date the application was made.</p> <p>Mr X's Protection visa was cancelled in September 2017 under s 109 of the <i>Migration Act 1958</i>, after the Department identified he provided incorrect information in his application for protection.</p> <p>The Department's report advised that following the cancellation of his visa, Mr X remained in the community unlawfully until he was located in April 2018 and was re-detained.</p> <p>The Department's report further advised that Mr X sought merits review of the decision to cancel his Protection visa. In August 2018 the Administrative Appeals Tribunal affirmed the decision.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court. In January 2019 the matter was adjourned. At the time of the Department's report, a further hearing date had not been set.</p> <p>In April 2019 Mr X's case was found not to meet the guidelines under s 197AB for a community placement.</p> <p>The Department's report advised that Mr X's judicial review was a barrier to his removal. He remains in an immigration detention facility as ministerial intervention would be required for the grant of a bridging visa or a community placement.</p> <p>The International Health and Medical Services report stated that Mr X received treatment for 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>The Ombudsman notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"> <li>1. Mr X's case be referred to the Minister for consideration under s 197AB for the grant of a community placement.</li> </ol>	