

Our ref: 486N-1001647-03

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 15 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).

While it is not appropriate to make recommendations at this time, I wish to bring to your attention one case for which I have identified concerns relating to the appropriateness of their immigration detention arrangements (Attachment C).

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 an interview with one individual on the schedule, Mr X (1002790-02).

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	1001647-O3	N	N	Mr X	1	1987	2,375	IDF	13 November 2018 and 16 May 2019	21 February 2019
2	1001966-O3	N	N	Ms X Miss X (daughter)	2	1986 2011	2,017 2,017	CD CD	10 August 2018 and 18 February 2019	15 October 2018
3	1002351-O3	1	N	Mr X Ms X (wife) Miss X (daughter)	3	1984 1987 2016	1,825 1,825 1,153	CD CD CD	25 September 2018 and 26 March 2019	25 June 2018
4	1002392-O2	1	N	Ms X Ms X (mother)	2	1992 1969	1,829 1,829	CD CD	2 May 2018, 12 November 2018 and 8 May 2019	21 March 2018
5	1002405-O3	N	N	Mr X	1	1987	1,813	IDF	20 November 2018 and 21 May 2019	21 February 2019
6	1002605-O2	1	N	Ms X Mr X (son)	2	1971 1996	1,466 1,466	CD CD	22 August 2018 and 27 February 2019	15 October 2018
7	1002790-O2	N	Y	Mr X	1	1986	1,277	IDF	22 October 2018 and 24 April 2019	13 February 2019
8	1002951-O	1	N	Mr X	1	1985	730	IDF	31 July 2018 and 7 February 2019	First Assessment
9	1002969-O	1	N	Ms X		1988	915	CD	3 September 2018 and 7 March 2019	First Assessment
10	1003000-O	N	N	Mr X	1	1989	917	IDF	12 November 2018 and 17 May 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), 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 Ms X (wife) Miss X (daughter)
Ombudsman ID	1002351-O3
<p>Mr X and Ms 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 five years.</p> <p>Mr X and Ms X were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their daughter, Miss X, was born in Australia following their temporary transfer.</p> <p>The Department of Home Affairs' (the Department) report advised that as the family 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 the family has 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, while they have a child under the age of five who is not yet attending school, the family will not be considered for the grant of Final Departure Bridging visas under s 195A of the <i>Migration Act 1958</i>.</p> <p>The International Health and Medical Services report advised that the family received treatment for complex 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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> 1. Explore options to address the prolonged detention of Mr X, Ms X and their daughter. 	

Attachment B

Name:	Ms X Ms X (mother)
Ombudsman ID:	1002392-O2
<p>Ms X and Ms X were detained in August 2013 after arriving in Australia by sea with Ms X's father and brother. They have remained in immigration detention, in a detention facility and the community, for a cumulative period of more than five years.</p> <p>The family was transferred to a Regional Processing Country (RPC) and in November 2014 Ms X and Ms X were returned to Australia for medical treatment. In October 2018 Ms X's father and brother were transferred to Australia and are not yet due for reporting under s 486N of the <i>Migration Act 1958</i>.</p> <p>The Department of Home Affairs' (the Department) report of 8 May 2019 advised that because Ms X and Ms X arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of Ms X's treatment.</p> <p>The Department advised that Ms X and Ms X have undergone a Refugee Status Determination by the Government of an RPC and were found to be refugees.</p> <p>The International Health and Medical Services report advised that Ms X and Ms X received treatment for complex physical and mental health concerns.</p> <p>The Department advised that, due to their significant vulnerabilities, Ms X and Ms X are not being considered for the grant of bridging visas.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore options to address the prolonged detention of Ms X and Ms X.	

Attachment B

Name	Ms X Mr X (son)
Ombudsman ID	1002605-02
<p>Ms X and her son, Mr X, were detained in August 2014 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 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 the family 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 International Health and Medical Services report advised that the family received treatment for mental health concerns.</p> <p>The Department's report of 27 February 2019 advised that Ms X and Mr X's case will be reviewed to determine if it was appropriate to manage their case in the community under Final Departure Bridging visas.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore options to address the prolonged detention of Ms X and her son.	

Attachment B

Name	Mr X
Ombudsman ID	1002951-O
<p>Mr X was detained in July 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 cancelled under s 501 of the <i>Migration Act 1958</i> in July 2016 following criminal charges. In August 2016 Mr X lodged a request for revocation of the cancellation of his visa. In February 2018 the then-Assistant Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>Mr X lodged an application for judicial review in the Federal Court (FC). In March 2019 the FC set aside the decision.</p> <p>The Department of Home Affairs' (the Department) report advised that Mr X remains in an immigration detention facility because, due to his criminal history, he has been assessed as posing a risk to the community.</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 further advised that Mr X lodged a request in June 2019 to be transferred to Facility Z to be closer to his family, which was declined due to capacity issues.</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 Z so he can reside closer to his family and support network.	

Name	Ms X
Ombudsman ID	1002969-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 two and a half years.</p> <p>Ms X was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Her daughter was born in Australia following her temporary transfer and is not yet subject to reporting under s 486N of the <i>Migration Act 1958</i>.</p> <p>The Department of Home Affairs' (the Department) 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, while Ms X has a child under the age of five who is not yet attending school, she will not be considered for the grant of a Final Departure Bridging visa under s 195A.</p> <p>The International Health and Medical Services report advised that Ms X received treatment for complex physical and mental health concerns.</p> <p>The Department's report advised that in February 2019 Ms X's case was referred to the Minister for consideration to vary her community placement residence under s 197AD.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore options to address the prolonged detention of Ms X.	

**CONCERNS IDENTIFIED 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	1002790-02
<p>Mr X was detained in October 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than three and a half years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in October 2014 following criminal convictions. As part of the cancellation process, the Department of Home Affairs (the Department) finalised an International Treaties Obligations Assessment (ITOA) in April 2014 and a supplementary ITOA in June 2014. On both occasions the assessments found that the cancellation of Mr X's visa would not result in a breach of Australia's international treaty obligations and that Australia did not have <i>non-refoulement</i> obligations to Mr X.</p> <p>Mr X's applications for judicial review in the Federal Circuit Court and Full Federal Court were dismissed in July 2015 and August 2016 respectively.</p> <p>Mr X lodged a Protection visa application in October 2016. In October 2017 Mr X was found to be owed protection, but his application was refused as he did not meet criterion under s 36. In May 2018 the Administrative Appeals Tribunal affirmed the refusal.</p> <p>The Department's report of 24 April 2019 advised that Mr X had no outstanding matters before the Department, tribunals or the courts and was on an involuntary removal pathway. The report further advised that while Mr X's case engages Australia's protections obligations, he cannot be removed from Australia.</p> <p>The Department's report advised that in October 2018 Mr X's case was referred for an assessment against the guidelines under s 195A for consideration for the grant of a bridging visa. The assessment was being progressed at the time of the report.</p> <p>The Department's report further advised that Mr X remains in an immigration detention facility because, due to his criminal history, he has been assessed as posing a risk to the community.</p> <p>The International Health and Medical Services report stated Mr X received treatment for complex physical and mental health concerns.</p> <p>During an interview with Ombudsman staff, Mr X complained of distress in relation to his detention situation because he does not wish to be removed to Country A but also does not wish to be detained indefinitely.</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>In light of the nature of Mr X's criminal offences and behavioural concerns, the Ombudsman does not consider it appropriate to make a recommendation about the grant of a bridging visa or a community placement at this time.</p> <p>The Ombudsman raises the concern that Mr X is likely to remain in immigration detention for a prolonged period due to the protracted nature of his removal from Australia. This poses a significant risk to his health and welfare.</p>	