

Our ref: 486N-1000109-O3

12 August 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 two recommendations in relation to two 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 an interview with one individual on the schedule, Mr X (1003089-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. 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	Department ID	No. of People	Year of birth	Days in detention ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	1000109-O3	N	N	Mr X	13558178580	1	1992	3,286	IDF	27 January 2019	26 November 2018
2	1002286-O3	1	N	Mr X	49715278790	1	1993	1,837	IDF	13 July 2018 and 23 January 2019	9 May 2018
3	1002483-O2	1	N	Mr X	57448304254	1	1992	1,645	CD	27 August 2018 and 28 February 2019	18 June 2018
4	1002888-O1	N	N	Mr X	16275218058	1	1990	1,100	IDF	30 April 2019	4 July 2019
5	1002891-O1	N	N	Mr X	94023256690	1	1979	1,101	IDF	2 May 2019	4 July 2019
6	1003067-O	N	N	Mr X	83782088490	1	1982	738	IDF	14 March 2019	First Assessment
7	1003071-O	N	N	Mr X	35289015828	1	1965	735	IDF	12 March 2019	First Assessment
8	1003080-O	N	N	Mr X	51178205760	1	1990	740	IDF	3 April 2019	First Assessment
9	1003089-O	N	N	Mr X	64763249804	1	1983	730	IDF	15 April 2019	First Assessment
10	1003094-O	N	N	Mr X	45744263895	1	1985	730	IDF	23 April 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
Ombudsman ID	1002286-O3
<p>Mr X was detained in March 2013 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 October 2016 Mr X's Safe Haven Enterprise visa application was refused. In September 2016 the Department of Home Affairs (the Department) issued Mr X with a 'Notice of Seizure of bogus documents' under the <i>Migration Act 1958</i> and his proof of citizenship card was deemed to be forfeited to the Commonwealth.</p> <p>Mr X sought judicial review in the Federal Circuit Court (FCC). In April 2017 the FCC dismissed his application as it found Mr X had filed his application for review outside the prescribed timeframe.</p> <p>In January 2019 a complex identity assessment determined that Mr X is a citizen of country A. The Department's report advised that Mr X's case was being assessed to determine whether consideration under ss 46A and 48B is required as his previous claims were assessed against information that stated he was a citizen of Country B.</p> <p>In January 2019 Mr X's case was identified for assessment against the guidelines under s 195A for referral to the Minister for consideration for the grant of a bridging visa.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X did not receive treatment for any major mental or physical health concerns. IHMS reiterated that in March 2018 the mental health team reported that Mr X was displaying evidence of prolonged detention fatigue.</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>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 of a community placement under s 197AB.	

Name	Mr X
Ombudsman ID	1002483-O2
<p>Mr X was detained in November 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 four and a half years.</p> <p>Mr X was 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 Mr X arrived after 19 July 2013 he remains liable for transfer back to an RPC on completion of his treatment.</p> <p>The Department's report advised that Mr 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 of 28 February 2019 advised the Department intends to review the transitory cohort to identify cases that could be managed in the community on Final Departure Bridging visas. Mr X's case will be reviewed in line with the process and, if it meets the requirements, his case will be referred to the Minister for consideration under s 195A of the <i>Migration Act 1958</i>.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for complex physical and mental health concerns.</p> <p>The Ombudsman notes with concern that Mr X's ongoing uncertainty about his immigration status 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 options to address the prolonged detention of Mr X.	