

Our ref: 486N-1001257-O2

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 12 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 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*.

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	1001257-O2	N	N	Mr X	1	1987	2,197	IDF	6 March 2019	4 July 2019
2	1002115-O3	N	N	Mr X	1	1972	2,020	IDF	6 March 2019	Awaiting tabling
3	1002255-O3	1	N	Ms X Master X (son)	2	1988 2017	2,018 873	CD CD	8 June 2018, 14 December 2018, 6 February 2019 and 18 June 2019	9 May 2018
4	1002326-O3	N	N	Mr X	1	1974	1,824	IDF	12 March 2019	13 February 2019
5	1002413-O3	N	N	Mr X	1	1997	1,654	SHEV	5 December 2018	13 February 2019
6	1002471-O2	1	N	Ms X Ms X (daughter)	2	1959 1993	1,652 1,643	CD CD	13 August 2018, 27 August 2018, 20 February 2019 and 25 February 2019	18 June 2018
7	1002891-O1	1	N	Mr X	1	1987	912	IDF	5 April 2019	Awaiting tabling
8	1003032-O	N	N	Mr X	1	1988	731	IDF	7 January 2019	First Assessment
9	1003035-O	1	N	Mr X	1	1961	740	IDF	24 January 2019	First Assessment
10	1003054-O	1	N	Mr X	1	1980	730	IDF	14 February 2019	First Assessment

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

<sup>2</sup> Immigration Detention Facility (IDF), Community Placement (CD), Safe Haven Enterprise visa (SHEV).

**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>	Ms X Master X (son)
<b>Ombudsman ID</b>	1002255-O3
<p>Ms X was detained in August 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 five and a half years.</p> <p>Ms X was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Her son, Master X, was born in Australia following her temporary transfer.</p> <p>The Department of Home Affairs' (the Department) report advised that, as Ms X arrived after 19 July 2013, the family remain liable for transfer back to an RPC on completion of their treatment.</p> <p>The Department's report advised that 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 Ms X has 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 Ombudsman's previous assessment recommended that the Department provide childcare support for the benefit of the family's health and welfare.</p> <p>On 9 May 2018 the Minister advised in a tabling Statement that the Department does not provide childcare for families in community placements.</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 Ms X and Master X are likely to remain in immigration detention for a prolonged period. This 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 Master X.</li></ol>	

Attachment B

<b>Name</b>	Ms X Ms X (daughter)
<b>Ombudsman ID</b>	1002471-O2
<p>Ms X and her three adult children, including Ms X, were detained in December 2013 after arriving in Australia by sea. Ms X and Ms X 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 her adult children were transferred to a Regional Processing Country (RPC). Ms X and her elder daughter, Ms X, were 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 Ms X have undergone a Refugee Status Determination by the Government of an RPC and were found to be refugees.</p> <p>The Ombudsman's previous assessment recommended that the Department explore options to reunify Ms X with her adult children who remained in an RPC.</p> <p>On 18 June 2018 the Minister advised in a tabling statement that Ms X remains subject to return to an RPC on completion of her treatment.</p> <p>Ms X's adult children have subsequently been returned to Australia and reside with her in the community. Ms X's husband is an Australian permanent resident who resides separately and nearby with visitation rights.</p> <p>The Department's report further advised that, in light of the vulnerabilities associated with Ms X's medical conditions, Ms X and Ms X 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 Ms X and Ms X require ongoing treatment for complex mental and physical health concerns.</p> <p>The Ombudsman notes with concern that Ms X's and Ms X'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 Ms X.</li></ol>	



Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002981-01
<p>Mr X was detained in April 2013 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 granted a bridging visa in October 2014, which was cancelled under s 116 of the <i>Migration Act 1958</i> following criminal charges. Mr X was re-detained in April 2018 following his release from a correctional facility.</p> <p>In July 2018 Mr X's Safe Haven Enterprise visa (SHEV) application was refused and in July 2018 the refusal was referred to the Immigration Assessment Authority (IAA) for review. In December 2018 the IAA determined it did not have jurisdiction to review the refusal decision as Mr X was not a 'fast track applicant' and referred his application back to the Department of Home Affairs (the Department).</p> <p>The Department's report advised that in November 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 ongoing at the time of the report.</p> <p>The Department's report advised that in March 2019 Mr X was informed he was not correctly notified of his SHEV application refusal decision and he could seek further merits review. The report advised that Mr X sought merits review by the Administrative Appeals Tribunal the same day.</p> <p>The Department's report advised that Mr X remains in an immigration detention facility as he requires ministerial intervention to be granted a visa.</p> <p>The International Health and Medical Services report stated that Mr X did not require treatment for any major physical or mental health concerns in the reporting period.</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. Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1003035-O
<p>Mr X was detained in January 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 November 2016 following criminal charges. In December 2016 Mr X lodged a request for revocation of the cancellation of his visa. In October 2017 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 and the matter was dismissed in November 2018. Mr X sought judicial review in the Full Federal Court in November 2018. The matter remained ongoing.</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 advised that Mr X received treatment for complex physical and mental health concerns.</p> <p>In February 2017 a surgeon reported that Mr X would benefit from a surgical procedure. In May 2018 a surgeon advised Mr X was failing non-operative management and his medical condition was now so severe that the only treatment option was a surgical procedure. Mr X was transferred between different facilities on three occasions in two years which disrupted his medical treatment and specialist appointments.</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 the Department:</p> <ol style="list-style-type: none"><li>1. Ensure that Mr X continues to be placed in a detention facility which allows him to progress on the waitlist for specialist appointments and surgeries to treat his medical condition.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1003054-O
<p>Mr X was detained in April 2017 following his release from a correctional facility and has remained in an immigration detention facility for more than two years.</p> <p>Mr visa was cancelled under s 501 of the <i>Migration Act 1958</i> in August 2016 following criminal charges. In May 2017 a delegate of the Minister decided not to revoke the decision to cancel Mr X's visa. In November 2018 the Administrative Appeals Tribunal affirmed the decision.</p> <p>Mr X lodged an application for judicial review in the Federal Court in December 2018 and the matter remained ongoing.</p> <p>The Department of Homes 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 advised that Mr X received treatment for complex physical and mental health concerns.</p> <p>Mr X was transferred between various immigration detention facilities which disrupted ongoing medical treatment and has prolonged his physical health issues. The Department advised Mr X was on a waiting list for a surgical procedure in City A with a wait time of approximately 12 months.</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 the Department:</p> <ol style="list-style-type: none"><li>1. Ensure that Mr X continues to be placed in a detention facility which allows him to progress on the waitlist for specialist appointments and surgeries to treat his medical condition.</li></ol>	