

Our ref: 486N-000479-O2

24 April 2019

The Hon David Coleman MP
Minister for Immigration, Citizenship 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 concerning 20 cases on the schedule (Attachment A) regarding 28 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 20 cases on the schedule and has made a total of 10 recommendations in relation to eight 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*.

I note Mr X's (1000878-O2) removal is likely to be protracted as involuntary removal to Country A is not possible at present. The Department of Home Affairs advised that Mr X has been included on a submission of long-term detainees to review whether each case should be considered individually for the grant of a bridging visa. In light of Mr X's inclusion on the submission I do not consider it appropriate to make a recommendation in relation to the grant of a bridging visa or a community placement at this time. However, I note the obstacles applying to his removal from Australia are likely to result in a prolonged placement in immigration detention, which poses a serious risk to his physical and mental health.

Yours sincerely



Jaala Hinchcliffe
Acting 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. Additionally, when required, further information was requested under s 486Q of the Act or s 8 of the *Ombudsman Act 1976*.

No	Ombudsman ID	Recommendations	Name	No. of People	Year of birth	Days in detention ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	000479-O2	0	Ms X	1	1981	1,828	IDF	3 September 2018 and 5 March 2019	26 November 2018
2	1000518-O2	1	Mr X	1	1994	3,104	IDF	14 June 2018 and 21 December 2018	9 May 2018
3	1000872-O1	0	Mr X	1	1983	1,277	IDF	10 January 2019	26 November 2018
4	1000878-O2	0	Mr X	1	1985	2,748	IDF	10 August 2018 and 14 February 2019	18 June 2018
5	1000934-O3	0	Mr X	1	1967	2,573	IDF	19 July 2018 and 4 February 2019	25 June 2018
6	1001272-O2	2	Mr X	1	1979	2,191	IDF	29 August 2018 and 28 February 2019	25 June 2018
7	1001332-O3	2	Mr X	1	1997	2,191	IDF	5 November 2018	15 October 2018
8	1002100-O2	0	Mr X	1	1986	2,202	CD	14 November 2018	15 October 2018
9	1002449-O3	1	Ms X Mr X (husband) Miss X (daughter) Master X (son)	4	1981 1984 2015 2016	1,651 1,596 1,338 895	CD CD CD CD	21 May 2018, 18 June 2018 and 28 November 2018	9 May 2018
10	1002679-O1	1	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)	4	1982 1985 2012 2015	1,277 1,277 1,277 1,162	CD CD CD CD	21 May 2018 and 19 November 2018	21 March 2018
11	1002684-O1	2	Mr X Ms X (wife) Miss X (daughter)	3	1971 1986 2015	1,284 1,285 1,160	CD CD CD	24 May 2018 and 30 November 2018	9 May 2018
12	1002787-O2	0	Mr X	1	1977	1,095	IDF	18 October 2018	26 November 2018
13	1002794-O1	1	Mr X	1	1985	1,098	IDF	5 November 2018	26 November 2018
14	1002815-O2	0	Mr X	1	1983	1,095	IDF	20 December 2018	21 February 2019
15	1002902-O	1	Mr X	1	1981	918	CD	15 May 2018 and 19 November 2018	First Assessment
16	1002956-O	0	Mr X	1	1986	915	IDF	13 August 2018 and 12 February 2019	First Assessment
17	1002958-O	0	Mr X	1	1995	917	IDF	16 August 2018 and 19 February 2019	First Assessment
18	1002964-O	0	Mr X	1	1993	912	IDF	28 August 2018 and 4 March 2019	First Assessment

¹ At date of the Department's latest report.

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

Attachment A

No	Ombudsman ID	Recommendations	Name	No. of People	Year of birth	Days in detention ¹	Detention status ²	Date of 486N report	Date last assessment tabled
19	1003014-O	0	Mr X	1	1986	740	IDF	12 December 2018	First Assessment
20	1003018-O	0	Mr X	1	1997	730	IDF	6 December 2018	First Assessment

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

Under s 486O of the Migration Act 1958

Name	Mr X
Ombudsman ID	1000518-02
<p>Mr X was detained in June 2010 after arriving in Australia by sea and has remained in an immigration detention, both in a detention facility and the community, for more than eight and a half years.</p> <p>In November 2010 Mr X was found not to engage Australia's protection obligations through a Refugee Status Assessment (RSA). In June 2011 an Independent Merits Review (IMR) affirmed the decision. In May 2015 an International Treaties Obligations Assessment (ITOA) found that Mr X was not owed protection.</p> <p>In June 2017 the Department of Home Affairs (the Department) advised that Mr X had been identified for removal but his removal was likely to be protracted due to the birth of his daughter who is an Australian citizen. The Department further advised that it was undertaking an assessment of the child's best interests in relation to Mr X's proposed removal from Australia. In August 2017 the Department concluded that the daughter's best interests could continue to be served by her mother, who would retain custody after Mr X's proposed removal.</p> <p>In November 2017 the Minister revoked Mr X's community placement and he was transferred to Facility Y in December 2017. The Department advised that the revocation was arranged to facilitate his removal from Australia.</p> <p>In December 2017 Mr X sought judicial review of the RSA and IMR decisions with the Federal Circuit Court. In January 2018 Mr X amended the application to challenge the negative ITOA and the Department's decision regarding the best interests of his daughter. Mr X also sought an injunction against the Department to prevent his removal from Australia. In March 2019 the matter was discontinued.</p> <p>In January 2018 the Department found that Mr X did not meet the guidelines under s 195A of the <i>Migration Act 1958</i> for referral to the Minister for his consideration to grant him a bridging visa.</p> <p>On 21 December 2018 the Department advised that Mr X's case was included on a submission for the Minister to brief him on a number of long term detention cases. The submission will give the Minister an opportunity to indicate if he is willing to consider these cases on an individual basis under his s 195A intervention powers.</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>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 Final Departure Bridging visa while he awaits his removal. 	

Attachment B

Name	Mr X
Ombudsman ID	1001272-O2
<p>Mr X was detained in February 2013 after arriving in Australia by sea and has remained in an immigration detention facility for more than five and a half years.</p> <p>Mr X's Protection visa application was refused in December 2014. The Refugee Review Tribunal affirmed the refusal decision in February 2015 and October 2015 and the Federal Circuit Court dismissed the matter in February 2018.</p> <p>In March 2018 Mr X sought review with the Full Federal Court and his matter was adjourned in July 2018 pending the decision in two other Federal Court matters.</p> <p>The Department of Home Affairs (the Department) advised that Mr X was referred for involuntary removal and the Department was awaiting the issuance of a travel document. Mr X may remain in Australia for a prolonged period while he awaits his removal due to protracted identity verification processes in Country A.</p> <p>International Health and Medical Services (IHMS) advised that Mr X received treatment for mental health concerns related to his prolonged detention.</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>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 of the <i>Migration Act 1958</i> for the grant of a Final Departure Bridging visa, given the protracted nature of his removal from Australia.	

Name	Mr X
Ombudsman ID	1001332-O3
<p>Mr X was detained in November 2012 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for more than six years.</p> <p>Mr X lodged a Safe Haven Enterprise visa application that was refused in November 2017. The Immigration Assessment Authority affirmed the refusal in December 2017 and Mr X lodged an application for judicial review with the Federal Circuit Court. A hearing is scheduled for August 2020.</p> <p>In September 2013 the Minister intervened under s 197AB of the <i>Migration Act 1958</i> to place Mr X in the community with his family. In May 2018 the Minister revoked his community placement under s 197AD following criminal charges.</p> <p>In January 2018 Mr X was convicted of criminal offences and was entered into a 12 month diversion plan.</p> <p>On 5 November 2018 the Department of Home Affairs (the Department) advised that Mr X's case was included on a submission for the Minister to brief him on a number of long term detention cases. The submission will give the Minister an opportunity to indicate if he is willing to consider these cases on an individual basis under his s 195A intervention powers.</p> <p>International Health and Medical Services advised that in June 2018 a psychiatrist noted that Mr X was vulnerable in detention in light of his 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 ss 195A and 197AB for the grant of a bridging visa or community placement to reside with his family.2. If a bridging visa or community placement are not deemed appropriate, the Department transfer Mr X to Facility Z to allow him to reside closer to his family.	

Attachment B

Name	Ms X Mr X (husband) Miss X (daughter) Master X (son)
Ombudsman ID	1002449-03
<p>Ms X and 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 years.</p> <p>Ms X and Mr X were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their two children were born in Australia following their temporary transfer.</p> <p>The Department of Home Affairs (the Department) advised that because 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 advised the family has undergone a Refugee Status Determination by the Government of an RPC and have been found to be refugees.</p> <p>The Department further advised that the family will not be considered for the grant of Final Departure Bridging visas under s 195A of the <i>Migration Act 1958</i> while they have children under the age of five who are not yet attending school.</p> <p>International Health and Medical Services advised that Ms X required treatment for significant mental health concerns.</p> <p>The Ombudsman notes with concern that the ongoing uncertainty of the immigration status of the family 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 all available options to address the prolonged detention of Ms X, Mr X and their two children.	

Attachment B

Name	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)
Ombudsman ID	1002679-O1
<p>Mr X, Ms X and their daughter were detained in July 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 three and a half years.</p> <p>The family was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their second daughter was born in Australia following their temporary transfer.</p> <p>The Department of Home Affairs (the Department) advised that because 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 advised that the family underwent a Refugee Status Determination by the Government of an RPC and they were found not to be refugees. Subsequent merits review determined that the family are refugees.</p> <p>The Ombudsman notes with concern that the ongoing uncertainty of the immigration status of the family 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 all available options to address the prolonged detention of Mr X, Ms X and their two daughters.	

Attachment B

Name	Mr X Ms X (wife) Miss X (daughter)
Ombudsman ID	1002684-01
<p>Mr X and Ms X were detained in September 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 three and a half 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 was born in Australia following their temporary transfer.</p> <p>Mr X and Ms X were returned to an RPC and subsequently returned to Australia for further medical treatment. The Department of Home Affairs (the Department) advised that because 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 advised it is supporting the Government of an RPC to finalise the Refugee Status Determination of the family while they remain temporarily in Australia.</p> <p>The Department further advised that the family will not be considered for the grant of Final Departure Bridging visas under s 195A of the <i>Migration Act 1958</i> while they have a child under the age of five who is not yet attending school.</p> <p>International Health and Medical Services advised that the family have required treatment for ongoing mental health concerns.</p> <p>The Ombudsman notes with concern that the ongoing uncertainty of the immigration status of the family poses a significant risk to their health and welfare.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Work with the Government of an RPC to expedite the determination of the family's refugee status, noting that the family arrived in Australia in September 2013.2. Explore all available options to address the prolonged detention of Mr X, Ms X and their daughter.	

Attachment B

Name	Mr X
Ombudsman ID	1002794-01
<p>Mr X was detained in July 2013 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for more than three years.</p> <p>Mr X has been found to engage Australia's protection obligations under the <i>Migration Act 1958</i>. In July 2017 Mr X's Safe Haven Enterprise visa (SHEV) application was refused under s 501. In October 2017 the Administrative Appeals Tribunal set aside and substituted the refusal decision with the direction that the discretion under s 501 to refuse Mr X's visa should not be exercised.</p> <p>In March 2018 the Department of Home Affairs (the Department) issued Mr X with a Notice of Intention to Consider Refusal (NOICR) of his SHEV application under s 501. Mr X provided a response to the NOICR in April 2018.</p> <p>At the time of the Department's latest report, dated 5 November 2018, a submission to the Minister under s 501 was yet to be finalised.</p> <p>During an interview with Ombudsman staff in June 2018, Mr X advised that he would benefit from being placed at a facility closer to his cousin and community support network in City A.</p> <p>International Health and Medical Services advised that Mr X was receiving treatment for multiple mental health concerns related to prolonged detention.</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 be transferred to Facility Z to ensure that he has greater access to his support networks.	

Attachment B

Name	Mr X
Ombudsman ID	1002902-O
<p>Mr X was detained in July 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 two 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) advised that because 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 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 further advised that Mr X will not be considered for the grant of a Final Departure Bridging visa under s 195A of the <i>Migration Act 1958</i> in light of the vulnerabilities associated with his medical conditions.</p> <p>IHMS has advised that Mr X requires ongoing treatment for complex mental health concerns. In June 2018 a psychiatrist advised that Mr X's mental health was deteriorating and exacerbated by his ongoing immigration detention.</p> <p>The Ombudsman notes with concern that Mr X is likely to remain in immigration detention for a prolonged period. This 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 all available options to address the prolonged detention of Mr X.	