

Our ref: 486N-1002479-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 24 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 six recommendations in relation to six 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 (1002576-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	1002479-O2	1	N	Mr X Ms X (wife) Master X (son) Miss X (daughter)	4	1971 1987 2006 2017	1,645 1,645 1,645 730	CD	27 August 2018, 26 February 2019 and 13 June 2019	18 June 2018
2	1002495-O2	1	N	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)	4	1985 1986 2010 2015	1,643 1,643 1,643 1,268	CD	4 September 2018 and 6 March 2019	25 June 2018
3	1002576-O2	1	N	Mr X	1	1992	1,465	IDF	21 January 2019	26 November 2018
4	1002604-O2	N	N	Mr X Ms X (wife) Master X (son) Miss X (daughter) Master X (son)	5	1984 1987 2005 2007 2015	1,460 1,460 1,460 1,460 1,351	CD	20 August 2018 and 19 February 2019	15 October 2018
5	1002639-O2	N	N	Mr X	1	1986	1,466	IDF	12 October 2018 and 17 April 2019	13 February 2019
6	1002869-O1	1	N	Ms X Mr X (husband) Miss X (daughter) Miss X (daughter)	4	1989 1981 2007 2016	1,095 1,088 1,088 1,047	CD CD CD CD	2 April 2019	Awaiting tabling
7	1002955-O	N	N	Mr X	1	1977	912	IDF	9 August 2018 and 7 February 2019	First Assessment
8	1003069-O	N	N	Mr X	1	1985	730	IDF	7 March 2019	First Assessment
9	1003078-O	1	N	Mr X Master X (son)	2	1976 2006	735 735	CD CD	28 March 2019	First Assessment
10	2000017-O2	1	N	Mr X	1	1983	1,465	IDF	13 December 2018 and 14 June 2019	4 July 2019

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

<sup>2</sup> 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*

<b>Name</b>	Mr X Ms X (wife) Master X (son) Miss X (daughter)
<b>Ombudsman ID</b>	1002479-O2
<p>Mr X, Ms X and their son 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>Mr X, Ms X and their son were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their two younger children, Miss X and Master X, were born in Australia following their temporary transfer. Master X is 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 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 the family underwent a Refugee Status Determination by the Government of an RPC and they were found not to be refugees. Subsequent merits review by the Government an RPC determined that the family are refugees.</p> <p>The Department's report further advised that, while they have children under the age of five who are not yet attending school, the family will not be considered for the grant of Final Departure Bridging visas under s 195A.</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><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 Mr X, Ms X and their children.</li></ol>	

Attachment B

<b>Name</b>	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)
<b>Ombudsman ID</b>	1002495-02
<p>Mr X, Ms X and their elder daughter 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>Mr X, Ms X and their elder daughter were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their two younger children, Miss X and Master X were born in Australia following their temporary transfer. Master X 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 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 the family underwent 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 children under the age of five who are not yet attending school, the family will not be considered for the grant of Final Departure Bridging visas under s 195A.</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><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 Mr X, Ms X and their children.</li></ol>	



Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002576-02
<p>Mr X was detained in January 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than four years.</p> <p>Mr X's visa was mandatorily cancelled under s 501 of the <i>Migration Act 1958</i> in December 2014 following criminal charges. In February 2015 Mr X lodged a request for revocation of the cancellation of his visa. In February 2018 the Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>On 15 March 2018 Mr X lodged a Protection visa application. In December 2018 Mr X was found to be owed protection under the complementary protection criterion, however his Protection visa application was refused under s 36(1C) because of his criminal history. In December 2018 Mr X lodged an application for merits review in the Administrative Appeals Tribunal. The matter remained ongoing at the time of the Department of Home Affairs' (the Department) report.</p> <p>The Department's report stated Mr X remains in an immigration detention 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 did not receive treatment for any complex physical and mental health concerns during this reporting period.</p> <p>During an interview with Ombudsman staff, Mr X advised that he was stressed and depressed due to his prolonged detention and separation from his family. Mr X advised he has family members in State A and wished to be transferred to Facility Z.</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. The Department consider transferring Mr X to Facility Z so he can reside closer to his family and support network.</li></ol>	

Attachment B

<b>Name</b>	Ms X Mr X (husband) Miss X (daughter) Miss X (daughter)
<b>Ombudsman ID</b>	1002869-01
<p>Ms X, Mr X and their elder daughter were detained in July 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 years.</p> <p>Ms X, Mr X and their elder daughter were transferred to a Regional Processing Country (RPC). Ms X gave birth to their younger daughter, Miss X, in Country A. The family were subsequently returned to Australia for medical treatment.</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 that the family has undergone a Refugee Status Determination by the Government of an RPC and were found to be refugees. The family is yet to lodge a derivative status application for their younger daughter.</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><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, Mr X and their children.</li></ol>	

<b>Name</b>	Mr X Master X (son)
<b>Ombudsman ID</b>	1003078-O
<p>Mr X and his son 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 two years.</p> <p>Mr X and his son 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 Mr X and his son 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 Mr X and his son 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, in light of the vulnerabilities associated with their medical conditions, Mr X and his son 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><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 Mr X and his son.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	2000017-02
<p>Mr X was detained in June 2015 while held in a correctional facility. Later that month he was released from criminal custody and transferred to Villawood Immigration Detention Centre. Mr X has remained in immigration detention for more than four years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in March 2015 following criminal charges. In April 2015 Mr X lodged a request for revocation of the cancellation of his visa. In February 2016 a delegate of the Minister decided not to revoke the decision to cancel Mr X's visa. In April 2017 the Administrative Appeals Tribunal (AAT) affirmed the delegate's decision.</p> <p>Mr X lodged an application for judicial review in the Federal Court (FC). In October 2018 the FC set aside the decision and remitted the matter to the AAT for determination according to law. The AAT re-determination was ongoing at the time of the Department of Home Affairs' (the Department) report.</p> <p>The Department's 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 mental health concerns.</p> <p>The Department's report advised that Mr X was transferred to Facility Y in March 2019 in response to capacity issues at Facility Z.</p> <p>Mr X's legal representative advised the Ombudsman that Mr X's transfer has disrupted ongoing legal representation and affected his mental health. Additionally, concerns about family separation have been exacerbated as Mr X's family reside in State A and are no longer able to visit him in 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><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"><li>1. The Department consider transferring Mr X to Facility Z so he can reside closer to his family and support network.</li></ol>	