

Our ref: 486N-1001113-O3

2 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 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 three recommendations in relation to three 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 ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	1001113-O3	1	N	Mr X	1	1948	2,374	IDF	7 March 2019	21 February 2019
2	1001123-O2	N	N	Mr X	1	1995	1,835	IDF	14 March 2019	Awaiting Tabling
3	1001247-O2	N	N	Mr X	1	1961	2,194	IDF	16 August 2018 and 18 February 2019	25 June 2018
4	1002619-O2	N	N	Mr X	1	1982	1,644	IDF	12 March 2019	13 February 2019
5	1002626-O2	N	N	Mr X	1	1982	1,467	IDF	17 September 2018 and 25 March 2019	26 November 2018
6	1002825-O1	N	N	Mr X	1	1957	1,095	APOD	4 January 2019	26 November 2018
7	1002850-O1	1	N	Mr X	1	1983	1,095	IDF	28 February 2019	21 February 2019
8	1002851-O1	N	N	Mr X	1	1987	1,100	IDF	7 March 2019	13 February 2019
9	1002937-O	N	N	Mr X	1	1989	924	IDF	13 July 2018 and 23 January 2019	First Assessment
10	1003049-O	1	N	Mr X	1	1981	738	IDF	11 February 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF) and Alternative Place of Detention (APOD).

**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	1001113-03
<p>Mr X was detained in September 2012 after living unlawfully in the community and has remained in an immigration detention facility for more than six and a half years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in August 2012 following criminal charges. The Department of Home Affairs' (the Department) report of 6 September 2014 advised that Mr X did not seek a review of the cancellation of his visa. The Department's report further advised that Mr X had no outstanding matters before the Department, tribunals or the courts and was referred for removal action.</p> <p>In January 2015 Mr X requested the Minister intervene to prevent his removal from Australia. In March 2015 the Department responded to Mr X and the matter was finalised without referral.</p> <p>The Department's report of 10 March 2015 advised that the Department had met with the High Commission of Country A on two occasions to facilitate Mr X's removal. The High Commission of Country A had advised that it was awaiting a response from the authorities of Country A to grant Mr X a right of re-entry to Country A.</p> <p>In August 2015 Mr X lodged a Protection visa application which was refused in January 2016. Subsequent merits and judicial reviews were unsuccessful.</p> <p>In October 2016 Mr X requested the Minister to commence an International Treaties Obligations Assessment (ITOA) in relation to the unintentional release of personal information.³</p> <p>In December 2016 the then-Assistant Minister refused Mr X's request as he had been given the opportunity to raise any new protection claims during the Protection visa application and review processes.</p> <p>In January 2017 Mr X lodged an application for judicial review in the Federal Circuit Court (FCC) seeking to quash the Minister's decision to not conduct an ITOA. Mr X also sought an injunction preventing his removal from Australia. The FCC dismissed the applications in August 2017.</p> <p>In January 2018 Mr X refused to sign a travel document application. The Department's report of 5 March 2018 advised that authorities of Country A have advised they will not issue Mr X a travel document unless the request was made voluntarily.</p> <p>In February 2019 Mr X's case was included on a group submission referred to the then-Assistant Minister to brief her on a number of long term detention cases. The submission provided the then-Assistant Minister an opportunity to indicate whether she was willing to consider the cases on an individual basis.</p> <p>In February 2019 the then-Assistant Minister indicated that Mr X's case should not be referred for consideration under the Minister's personal intervention powers.</p>	

³ In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the Department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the Department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the Department.

Attachment B

Name	Mr X
Ombudsman ID	1001113-O3
<p>The Department's report of 7 March 2019 advised that Mr X had no outstanding matters before the Department, tribunals or the courts relating to his immigration case and he remains on an involuntary removal pathway. The report further advised that the Department will continue to explore options for Mr X's removal from Australia.</p> <p>The International Health and Medical Services report stated that Mr X required treatment for multiple physical health concerns and was provided with mental health support to vent his frustrations at his prolonged detention.</p> <p>The Department's report advised that Mr X remains in an immigration detention facility based on an assessment of his risk to the community due to his criminal history.</p> <p>In light of the ministerial submission and the nature of Mr X's criminal offences 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> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Department continue to consult with the authorities of Country A to repatriate Mr X, in light of the length of time he has remained in detention.	

Name	Mr X
Ombudsman ID	1002850-O1
<p>Mr X was detained in February 2016 after living unlawfully in the community and has remained in an immigration detention facility for more than three years.</p> <p>In May 2016 Mr X's Protection visa application was refused and in September 2016 the Administrative Appeals Tribunal affirmed the refusal.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court and the matter was dismissed in December 2016. Mr X's application for judicial review in the Federal Court was adjourned in March 2018, with no further updates recorded.</p> <p>The Department of Home Affairs' report advised that in October 2018 Mr X's case was referred to the Minister for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X received treatment for complex physical and mental health concerns. IHMS advised that continued detention would exacerbate Mr X's physical and 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. The consideration of Mr X's case under s 195A for the grant of a bridging visa be expedited.	

Name	Mr X
Ombudsman ID	1003049-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 a cumulative period of more than two years.</p> <p>Mr X's bridging visa was cancelled under s 116 of the <i>Migration Act 1958</i> in April 2017 following criminal charges. Mr X sought merits review of the decision at the Administrative Appeals Tribunal and the matter was dismissed in May 2017.</p> <p>In March 2018 Mr X's Safe Haven Enterprise visa application was refused and in June 2018 the Immigration Assessment Authority affirmed the refusal.</p> <p>The Department of Home Affairs' (the Department) report advised that Mr X does not have a valid travel document and is unwilling to return to Country A voluntarily. The authorities of Country A are currently not cooperating with the involuntary return of its citizens and as a result Mr X's removal is likely to be protracted.</p> <p>The Department's report further advised that Mr X remains in an immigration detention facility based on an assessment of his risk to the community due to his criminal history.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for multiple physical and mental health concerns.</p> <p>The Department's report advised that Mr X had been assaulted and seriously injured by other detainees on multiple occasions in his current detention placement.</p> <p>The Department's report further advised that in February 2019 Mr X's case was referred for assessment against the guidelines under s 195A of the <i>Migration Act 1958</i> for referral to the Minister for consideration for the grant of a bridging visa.</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 review Mr X's detention placement in light of recent assaults and his concerns about his ongoing safety in his current placement.	