

Our ref: 486N-1001775-O3

 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 seven recommendations in relation to five cases (Attachment B).

While it is not appropriate to make recommendations at this time, I wish to bring to your attention one case for which I have identified concerns relating to the appropriateness of their immigration detention arrangements (Attachment C).

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 three individuals on the schedule, Mr X (1001775-O3), Mr X (1002022-O2) and Mr X (1002940-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	No. of People	Year of birth	Days in detention ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	1001775-O3	1	N	Mr X	1	1986	2,008	IDF	10 January 2019	15 October 2018
2	1002022-O2	1	N	Mr X	1	1977	2,021	IDF	22 August 2018 and 1 March 2019	18 June 2018
3	1002569-O2	1	N	Mr X	1	1984	1,470	IDF	9 July 2018 and 17 January 2019	15 October 2018
4	1002572-O2	2	N	Mr X	1	1987	1,472	IDF	12 July 2018 and 23 January 2019	15 October 2018
5	1002765-O1	N	N	Mr X	1	1987	1,281	IDF	15 March 2018, 17 September 2018 and 19 March 2019	9 May 2019
6	1002940-O	N	Y	Mr X	1	1990	921	IDF	9 July 2018 and 15 January 2019	First Assessment
7	1002963-O	2	N	Ms X Master X (son) Miss X (daughter)	3	1971 2003 2017	914 914 732	CD CD CD	27 August 2018, 25 February 2019 and 25 March 2019	First Assessment
8	1003033-O	N	N	Mr X	1	1996	730	IDF	14 January 2019	First Assessment
9	1003064-O	N	N	Mr X	1	1971	734	IDF	5 March 2019	First Assessment
10	1003086-O	N	N	Mr X	1	1993	730	IDF	10 April 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF) and 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	1001775-O3
<p>Mr X was detained in July 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>In July 2017 Mr X's Safe Haven Enterprise visa (SHEV) application was refused. In September 2017 the Immigration Assessment Authority remitted his application to the Department of Home Affairs (the Department) for reconsideration with the direction that he is a refugee as defined by s 5H(1) of the <i>Migration Act 1958</i>.</p> <p>The Department's report of 17 July 2015 advised that Mr X was a person of interest to the Department based on information recorded during his entry interview about alleged foreign criminal charges.</p> <p>In January 2016 and November 2016 Mr X's case was referred to the Minister for consideration under s 195A for the grant of a bridging visa. On both occasions the Minister declined to intervene.</p> <p>In July 2017 Mr X's case was identified for assessment against the guidelines under s 195A. In September 2017 Mr X's case was found not to meet the guidelines for referral following advice from the Minister's office that nationals of Country A with alleged criminal history will no longer be considered under s 195A.</p> <p>The Department's report of 10 January 2019 advised that Mr X continues to remain a person of interest to the Department given the alleged foreign criminal charges against him. The Department's report further advised that Mr X's SHEV application cannot be finalised until the Department completes its investigation into the matter.</p> <p>The Department's report advised that the Department was preparing a submission for the Minister, briefing him on a number of long-term detention cases including Mr X's. The submission will give the Minister an opportunity to indicate whether he is willing to consider those cases on an individual basis.</p> <p>The report further advised that Mr X remains in an immigration detention facility as he is barred from lodging a valid visa application and the Minister has previously declined to consider his case under s 195A.</p> <p>The International Health and Medical Services report stated that Mr X received treatment for complex mental health concerns.</p> <p>The Ombudsman notes that Mr X has remained a person of interest to the Department since July 2015 and his alleged foreign criminal charges have been under investigation since September 2017.</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 expedite its investigation into whether Mr X is subject to foreign criminal charges in order to finalise his SHEV application.	

Name	Mr X
Ombudsman ID	1002022-O2
<p>Mr X was detained in May 2010 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than five and a half years.</p> <p>In March 2017 Mr X's Safe Haven Enterprise Visa application was refused and in May 2017 the Immigration Assessment Authority affirmed the refusal. Mr X's applications for judicial review in the Federal Circuit Court and Federal Court (FC) were dismissed in November 2017 and September 2018 respectively.</p> <p>In October 2018 Mr X made an application to the High Court (HC) to appeal the judgment of the FC. The HC is yet to list the matter for hearing.</p> <p>The Department of Home Affairs' (the Department) report of 1 March 2019 advised that in August 2018 Mr X's case was found to meet 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 Department's report advised that 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. In February 2019 the then-Assistant Minister indicated that Mr X's case should be referred for consideration under the Minister's personal intervention powers.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X received treatment for complex physical and mental health concerns.</p> <p>IHMS advised medical specialists have stated on several occasions that Mr X would benefit from being in an immigration detention facility in City A where he could be closer to his partner.</p> <p>During an interview with Ombudsman staff in April 2019, Mr X advised he had asked to be transferred to Facility Z so he can be closer to his partner. He received a response in March 2019 from the Australian Border Force advising that his request was unable to be facilitated due to capacity restraints and to reapply in three 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>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Department consider transferring Mr X to Facility Z so he can reside closer to his family and support networks.	

Name	Mr X
Ombudsman ID	1002569-O2
<p>Mr X was detained in November 2010 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than four years.</p> <p>In May 2017 Mr X's Safe Haven Enterprise visa application was refused. In January 2018 the Immigration Assessment Authority affirmed the refusal.</p> <p>The Department of Home Affairs' (the Department) report of 17 January 2019 advised that in August 2018 Mr X's case was found not to meet the guidelines for referral to the Minister under s 197AB of the <i>Migration Act 1958</i> for consideration of a community placement.</p> <p>The Department's report further advised that in October 2018 Mr X's case was found to meet the guidelines under s 195A for referral to the Minister for consideration of the grant of a bridging visa. At the time of the Department's report, a submission was being drafted for the Minister's consideration.</p> <p>The Department's 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 its citizens and as a result Mr X's removal is likely to be protracted.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for 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	1002572-O2
<p>Mr X was detained in August 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 years.</p> <p>Mr X was transferred to 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 of 12 July 2018 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 23 January 2019 advised that in November 2018 Mr X's case was referred for assessment against the guidelines under s 197AB of the <i>Migration Act 1958</i> for a possible referral to the Minister for consideration of a community placement. In response to a request for information, on 31 May 2019 the Department advised that the assessment of Mr X's case against the s 197AB guidelines was ongoing.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X received treatment for complex physical and mental health concerns.</p> <p>The IHMS Medical Director advised that Mr X's mental health may be adversely affected by being in held detention as he was not coping well in a detention facility.</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. Expedite the assessment of Mr X's case against the guidelines under s 197AB for a possible community placement.2. Explore options to address the prolonged detention of Mr X.	

Name	Ms X Master X (son) Miss X (daughter)
Ombudsman ID	1002963-O
<p>Ms X and Master X were detained in August 2013 after arriving in Australia by sea with Ms X's husband, Mr X and their elder daughter, Ms X. Ms X and Master X have 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>Ms X, Mr X and their two children were transferred to Regional Processing Country (RPC) in September 2013. Ms X and Master X were returned to Australia for medical treatment in September 2016. Ms X and Mr X's younger daughter, Miss X, was born in Australia following their temporary transfer.</p> <p>Mr X and Ms X were returned to Australia for medical treatment in April 2018 and are 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 has undergone a Refugee Status Determination by the Government of an RPC and has been found to be refugees. Miss X received a positive derivative status in January 2019.</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 bridging visas under s 195A.</p> <p>The International Health and Medical Services (IHMS) report advised that Ms X and Master X received treatment for complex physical and mental health concerns.</p> <p>IHMS advised that in September 2017 Ms X requested to move to City A to be closer to familial contacts. Her psychiatrist supported the request, stating that it would provide social supports for Ms X. IHMS further advised that Ms X's separation from her husband while he remained in an RPC adversely affected her mental health and ability to care for herself and her son.</p> <p>IHMS supported a recommendation from Ms X's psychiatrist that consideration be given to moving the family to City A to be closer to extended family, to provide them increased psychosocial support. IHMS recommended that, due to the level of psychological distress experienced by Ms X and her family members, the family unit should remain together and any request made to reside closer to familial supports in City A should be considered. IHMS advised that Ms A has since been reunited with her husband and daughter in State B, however Ms X continues to voice a desire to travel interstate to be nearer her family.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> 1. Refer the family's case to the Minister for consideration to vary their community placement address under s 197AD to enable them to be closer to their support network in City A for the benefit of the family's health and welfare. 2. Explore options to address the prolonged detention of Ms X and her family. 	

**CONCERNS IDENTIFIED 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	1002940-O
<p>Mr X was detained in November 2012 after arriving in Australia by sea and 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 granted bridging visas in April 2013 and October 2016. On both occasions Mr X resided in the community unlawfully upon cessation of the visas. Mr X was re-detained in March 2015 and June 2018 respectively.</p> <p>In February 2017 Mr X's Safe Haven Enterprise visa application was refused and in November 2017 the Immigration Assessment Authority affirmed the refusal. Mr X lodged an application for judicial review in the Federal Circuit Court and the matter was dismissed in October 2018.</p> <p>In December 2017 Mr X's application for a bridging visa was refused under s 501 of the <i>Migration Act 1958</i> and in August 2018 the Administrative Appeals Tribunal affirmed the refusal.</p> <p>The Department of Home Affairs' (the Department) report of 15 January 2019 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 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 (IHMS) report stated that Mr X received treatment for complex mental health concerns.</p> <p>IHMS is supportive of Mr X relocating to City B to be closer to his family. In response to a request for information, on 8 May 2019 the Department advised that Mr X has a high risk rating and a history of non-compliant behaviour in immigration detention. The Department stated that Facility Y is not a suitable placement for Mr X.</p> <p>In light of the nature of Mr X's criminal offences and behavioural concerns, the Ombudsman does not consider it appropriate to make a recommendation for the grant of a bridging visa or a community placement at this time.</p> <p>In light of Mr X's risk assessment the Ombudsman does not consider it appropriate to make a recommendation for transfer to Facility Y 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>	