

Our ref: 486N-1000846-O4

16 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 20 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 two recommendations in relation to two 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. 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	1000846-O4	0	Mr X	1	1992	2,740	IDF	7 December 2018	Awaiting Tabling
2	1001148-O3	1	Mr X	1	1983	2,191	IDF	5 October 2018	26 November 2018
3	1001170-O3	0	Ms X	1	2005	2,736	CD	22 October 2018	18 February 2019
4	1001379-O3	0	Mr X	1	1984	2,010	IDF	5 November 2018	21 February 2019
5	1002426-O2	0	Mr X	1	1982	1,102	IDF	21 January 2019	Awaiting Tabling
6	1002640-O2	0	Mr X	1	1948	1,277	Removed	14 October 2018	26 November 2018
7	1002723-O1	0	Mr X	1	1997	1,287	Removed	30 July 2018 and 6 February 2019	18 June 2018
8	1002734-O1	0	Mr X	1	1962	1,286	IDF	13 August 2018 and 18 February 2019	18 June 2018
9	1002786-O2	0	Mr X	1	1974	1,095	IDF	17 October 2018	13 February 2019
10	1002827-O1	1	Mr X	1	1987	1,096	IDF	7 July 2018 and 7 January 2019	25 June 2018
11	1002831-O1	0	Mr X	1	1988	1,095	IDF	22 January 2019	26 November 2018
12	1002877-O1	0	Mr X	1	1984	912	IDF	15 October 2018	13 February 2019
13	1002904-O1	0	Mr X	1	1982	912	IDF	16 November 2018	Awaiting Tabling
14	1002932-O1	0	Mr X	1	1964	912	IDF	28 December 2018	21 February 2019
15	1002933-O1	0	Mr X	1	1965	925	IDF	6 December 2018	Awaiting Tabling
16	1002935-O1	0	Mr X	1	1975	919	IDF	11 January 2019	21 February 2019
17	1002950-O1	0	Mr X	1	1983	912	IDF	25 January 2019	13 February 2019
18	1003002-O	0	Mr X	1	1975	730	IDF	15 November 2018	First Assessment
19	1003031-O	0	Mr X	1	1983	742	IDF	17 January 2019	First Assessment
20	1003050-O	0	Mr X	1	1995	730	Removed	5 February 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Removed.

**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	1001148-03
<p>Mr X was detained in October 2012 following the cancellation of his Transit visa under s 116 of the <i>Migration Act 1958</i>. He has remained in an immigration detention facility for more than six years.</p> <p>In December 2017 Mr X's Safe Haven Enterprise visa application was refused. He subsequently sought judicial review of this decision at the Federal Circuit Court. The Department of Home Affairs (the Department) advised that a hearing is scheduled for April 2019.</p> <p>At the time of the Department's report, dated 5 October 2018, Mr X was being considered for referral to the Minister under s 195A for the grant of a bridging visa.</p> <p>International Health and Medical Services (IHMS) advised that Mr X has received treatment for mental health concerns.</p> <p>In March 2017 an IHMS psychiatrist recommended that Mr X be transferred to community detention due to his vulnerability and inability to cope with the held detention environment. The psychiatrist advised that Mr X is subject to bullying and discrimination.</p> <p>An IHMS mental health nurse reported in June 2018 that Mr X isolated himself and continued to be prescribed with antidepressant medication.</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 assessed against the s 195A guidelines for the grant of a bridging visa.	

Name	Mr X
Ombudsman ID	1002827-O1
<p>Mr X arrived in Australia in February 2006 on a Higher Education Sector visa which ceased in August 2009. Mr X was detained in August 2015 after living unlawfully in the community. He has remained in an immigration detention facility for a cumulative period of more than three years.</p> <p>In September 2017 Mr X requested voluntary removal from Australia.</p> <p>The Department of Home Affairs (the Department) advised in its latest report, dated 7 January 2019, that it has been unable to obtain a travel document to progress Mr X's removal to Country A due to protracted identity verification processes in Country A.</p> <p>In December 2018 the Department requested an update from the Country A authorities on the status of its travel document request, however they were unable to provide a reason as to the delay in processing Mr X's travel documents. The matter remained ongoing.</p> <p>In March 2018 Mr X was found not to meet the guidelines under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. The Department advised that Mr X has been placed in held detention on the basis that he has been assessed as being at a high risk of non-engagement with the Department due to his history of not abiding with visa conditions, resulting in periods of remaining unlawfully in the community.</p> <p>International Health and Medical Services (IHMS) advised that Mr X received treatment for mental health concerns. In October 2018 Mr X reported frustration and low mood associated with his placement at Facility Y as his wife is located in City B and is unable to visit him.</p> <p>IHMS recommended that Mr X be transferred to City B for social and emotional support from his family. The transfer recommendation was reviewed and approved by the IHMS Medical Director in December 2018.</p> <p>The Ombudsman notes the serious risk posed to Mr X's mental health, due to particular obstacles that apply to his removal from Australia which is likely to result in his prolonged immigration detention.</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 to enable him to reside closer to his family support network while he awaits the resolution of his protracted removal from Australia.	