

Our ref: 486N-1001501-03

13 May 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 29 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 eight 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*.

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 <sup>1</sup>	Detention status <sup>2</sup>	Date of 486N report	Date last assessment tabled
1	1001501-O3	0	Ms X Master X (son)	2	1988 2014	2,008 1,402	CD CD	4 June 2018 and 6 December 2018	25 June 2018
2	1001519-O4	0	Master X	1	2002	2,008	CD	5 December 2018	21 February 2019
3	1001618-O3	0	Mr X	1	1986	2,008	IDF	18 June 2018 and 21 December 2018	25 June 2018
4	1002176-O2	0	Mr X	1	1982	1,640	FDBV	26 March 2018	21 March 2018
5	1002269-O1	0	Mr X	1	1966	1,092	SHEV	15 February 2019	20 October 2016
6	1002287-O3	1	Mr X Ms X (wife) Miss X (daughter) Master X (son) Miss X (daughter)	5	1974 1977 2005 2012 2016	1,826 1,826 1,826 1,826 1,088	CD CD CD CD CD	16 July 2018 and 14 January 2019	15 October 2018
7	1002293-O3	1	Mr X Ms X (wife) Miss X (daughter)	3	1990 1991 2015	1,829 1,829 1,198	CD CD CD	16 July 2018 and 18 January 2019	25 June 2018
8	1002459-O2	1	Mr X	1	1972	1,653	CD	23 July 2018 and 1 February 2019	18 June 2018
9	1002553-O3	0	Mr X	1	1974	1,462	IDF	10 December 2018	21 February 2019
10	1002691-O3	0	Mr X	1	1988	1,472	IDF	27 February 2019	Awaiting Tabling
11	1002819-O1	0	Mr X	1	1979	1,091	IDF	19 December 2018	26 November 2018
12	1002826-O1	0	Mr X	1	1978	1,095	IDF	4 January 2019	26 November 2018
13	1002836-O1	0	Mr X	1	1992	1,095	IDF	5 February 2019	26 November 2018
14	1002938-O1	1	Mr X	1	1987	920	IDF	14 January 2019	First Assessment
15	1003021-O	0	Mr X	1	1985	732	IDF	17 December 2018	First Assessment
16	1003024-O	0	Mr X	1	1996	732	IDF	18 December 2018	First Assessment
17	1003036-O	0	Mr X	1	1993	730	IDF	17 January 2019	First Assessment
18	1003041-O	0	Mr X	1	1986	745	Removed	5 February 2019	First Assessment
19	1003051-O	0	Mr X	1	1980	737	IDF	14 February 2019	First Assessment

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

<sup>2</sup> Immigration Detention Facility (IDF), Community Placement (CD), Safe Haven Enterprise visa (SHEV), Removed and Final Departure Bridging visa (FDBV).

Attachment A

No	Ombudsman ID	Recommendations	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
20	1003066-O	4	Mr X Miss X (daughter) Master X (son)	3	1987 2007 2012	733 733 733	CD CD CD	7 March 2019	First Assessment

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

*Under s 486O of the Migration Act 1958*

<b>Name</b>	Mr X Ms X (wife) Miss X (daughter) Master X (son) Miss X (daughter)
<b>Ombudsman ID</b>	1002287-03
<p>Mr X, Ms X and their two eldest children 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 five years.</p> <p>Mr X and his family were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their younger daughter was born in Australia following their temporary transfer.</p> <p>The Department of Home Affairs (the Department) advised that because Mr X and his 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 Mr X and his family have 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 has advised that Mr X, Ms X and their children require ongoing treatment for complex mental health concerns.</p> <p>As previously reported, in November 2017 a psychologist advised that to prevent further deterioration in Ms X's mental health, and that of her family, Ms X and her family require stability, security and predictability in regards to their future.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> <li>1. Explore all available options to address the prolonged detention of Mr X, Ms X and their three children.</li> </ol>	

<b>Name</b>	Mr X Ms X (wife) Miss X (daughter)
<b>Ombudsman ID</b>	1002293-03
<p>Mr X and Ms X were detained in December 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 five 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 and son were born in Australia following their temporary transfer and their son 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) advised that because Mr X and Ms X 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 Mr X and his family have undergone a Refugee Status Determination by the Government of an RPC and have been found to be refugees.</p> <p>International Health and Medical Services have advised that Ms X continues to be monitored for a history of 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><b>Recommendation</b></p> <p>The Ombudsman recommends that that the Department:</p> <ol style="list-style-type: none"> <li>1. Explore all available 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>	1002459-O2
<p>Mr X was detained in August 2013 after arriving by sea. He has 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 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 underwent a Refugee Status Determination by the Government of an RPC and was found not to be a refugee. Subsequent merits review determined that Mr X is a refugee.</p> <p>At the time of the Department's latest report, dated 1 February 2019, the Department was preparing a group submission for the Minister's consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. Mr X's case is included in this submission.</p> <p>International Health and Medical Services advised that Mr X requires ongoing treatment for complex mental health concerns. A treating psychiatrist advised in February 2018 that Mr X should never be returned to an RPC as this would severely affect his mental health in a negative manner.</p> <p>The Ombudsman notes with concern that Mr X's ongoing uncertainty of his immigration status poses a significant risk to his 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 all available options to address the prolonged detention of Mr X.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002938-O1
<p>Mr X was detained in August 2012 after arriving in Australia by sea. Mr X was granted a bridging visa and released from immigration detention in December 2012. His bridging visa was subsequently cancelled under s 116 of the <i>Migration Act 1958</i> in October 2016 following criminal charges. Mr X has remained in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>In April 2017 Mr X lodged a Safe Haven Enterprise visa application. Assessment of this application remained ongoing at the time of the Department of Home Affairs' (the Department) latest report, dated 14 January 2019.</p> <p>The Department advised that Mr X's case is affected by the Federal Court judgment which declared that the purported appointment of a port as a proclaimed port within the Territory of Ashmore and Cartier Islands was invalid.</p> <p>The Department further advised that it is considering the effect of this judgment and will notify the affected individuals of the appropriate next steps.</p> <p>In May 2018 Mr X's case was identified for assessment against the s 195A guidelines for the grant of a bridging visa.</p> <p>The Department advised that Mr X's case was not referred for assessment at that time as he could be assessed for the grant of a bridging visa by a departmental delegate under the Migration Regulations 1994.</p> <p>In July 2018 a delegate declined to consider granting Mr X a bridging visa. As Mr X has subsequently been identified as not being a direct entry person, he is therefore no longer eligible for the grant of a bridging visa by a departmental delegate.</p> <p>The Department advised in March 2019 that Mr X's case has not been re-referred for assessment against the s 195A guidelines.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"> <li>1. Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.</li> </ol>	

Attachment B

<b>Name</b>	Ms X Miss X (daughter) Master X (son)
<b>Ombudsman ID</b>	1003066-O
<p>Ms X, her husband, Mr X and their two eldest children were detained in August 2013 after arriving in Australia by sea. The family was transferred to a Regional Processing Country (RPC) and Ms X and Mr X's second daughter was born in an RPC.</p> <p>Ms X and her three children were returned to Australia for medical treatment. Ms X and Mr X's third daughter was born in Australia following their temporary transfer. Mr X remains at an RPC.</p> <p>The Department of Home Affairs (the Department) advised that Mr X has been involved in behavioural incidents and that these incidents will be considered as part of any decision to transfer him to Australia.</p> <p>Ms X and her two eldest children have remained in immigration detention, in a detention facility and the community, for a cumulative period of more than two years. Ms X and Mr X's two youngest children are not yet subject to reporting under s 486N of the <i>Migration Act 1958</i>.</p> <p>The Department advised that because the family arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of Ms X's 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 Department further advised that the family will not be considered for the grant of Final Departure Bridging visas under s 195A while they have children under the age of five who are not yet attending school.</p> <p>International Health and Medical Services (IHMS) advised that Ms X requires ongoing treatment for complex mental and physical health concerns. IHMS advised that prior to the family's return to Australia Ms X had unpredictable behaviour.</p> <p>IHMS advised that Ms X's separation from her husband who remains on an RPC is adversely affecting her physical and mental health. A counsellor advised in February 2019 that Ms X has a physical condition that is impacting significantly on her functioning including her ability to engage in activities outside the house for herself and her four children. It was reported that she was unable to attend appointments as she is the sole carer for her children. A counsellor recommended that the family be provided with funded childcare to enable Ms X to attend regular health appointments and to provide the children with developmentally appropriate activities outside the home.</p> <p>A counsellor further advised in February 2019 that return to an RPC or held detention would lead to a deterioration in Ms X's and her children's mental health.</p> <p>IHMS advised that Miss X and Master X reported missing their father and require treatment for mental health concerns.</p> <p>The Ombudsman notes with concern that the ongoing uncertainty of the immigration status of the family and their separation from Mr X poses a significant risk to their health and welfare.</p>	



Attachment B

<b>Name</b>	Ms X Miss X (daughter) Master X (son)
<b>Ombudsman ID</b>	1003066-O
<b>Recommendation</b>	
The Ombudsman recommends that the Department:	
<ol style="list-style-type: none"><li>1. Consider providing the family with access to funded childcare to effectively support the family's medical needs.</li><li>2. Consider transferring Mr X to Australia to reunify the family.</li><li>3. If the family is reunified, ensure that the Ms X and Mr X are provided with sufficient support to appropriately support their children.</li><li>4. Explore all available options to address the prolonged detention of Ms X and her children.</li></ol>	

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

*Under s 486O of the Migration Act 1958*

<b>Name</b>	Ms X Master X (son)
<b>Ombudsman ID</b>	1001501-O3
<p>Ms X was detained in June 2013 following her release from a correctional facility. She has remained in immigration detention, both in a detention facility and the community, for more than five and a half years. Her son Master X was born in Australia and detained in February 2015.</p> <p>Ms X lodged a Protection visa application in May 2013 which was refused in July 2013. The Refugee Review Tribunal affirmed the refusal in August 2013.</p> <p>The Department of Home Affairs (the Department) advised that Ms X and her son have no ongoing matters before the Department, the courts or tribunals and have refused to depart Australia voluntarily.</p> <p>The Department advised that the family's involuntary removal from Australia remains protracted due to their differing nationalities and rights of residence. Ms X is a citizen of Country A and has been denied entry to Country B. Master X holds a Country B passport and does not have a right of residence in Country A. The Department advised that Ms X is not willing to apply for a visa on behalf of her son to regularise his immigration status in Australia.</p> <p>At the time of the Department's latest report, dated 6 December 2018, the Department was exploring options to enable the resolution of the family's immigration status.</p> <p>The Department further advised that Ms X and her son will continue to be placed in the community as it is the least restrictive form of detention. 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 Master X remains under the age of five and is not yet attending school.</p> <p>International Health and Medical Services advised that Ms X received treatment for multiple mental health concerns. A treating counsellor reported that prolonged detention and the uncertainty surrounding the family's immigration status was adversely impacting Ms X's mental health.</p> <p>In light of the Department's advice that it is exploring options to resolve the family's status and Ms X's unwillingness to apply for a visa the Ombudsman does not consider it appropriate to make a recommendation regarding the family's detention status at this time.</p> <p>The Ombudsman raises the concern that Ms X and her son are likely to remain in immigration detention in the community for a prolonged period due to the protracted nature of their removal from Australia. Their prolonged detention and the uncertainty of their immigration status poses a significant risk to their health and welfare.</p>	