

Our ref: 486N-1000894-O2

8 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 11 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 four 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	1000894-O2	3	N	Ms X	1	1960	2,543	IDF	25 June 2018 and 17 December 2018	15 October 2018
2	1002051-O2	N	N	Mr X	1	1989	2,013	TPV	20 August 2018 and 21 February 2019	18 June 2018
3	1002215-O2	N	N	Mr X	1	1966	1,470	IDF	19 March 2019	21 February 2019
4	1002756-O2	N	N	Mr X	1	1963	1,288	IDF	15 March 2019	Awaiting Tabling
5	1002854-O1	1	N	Mr X	1	1987	1,105	IDF	15 March 2019	Awaiting Tabling
6	1002865-O1	N	N	Mr X	1	1988	1,095	IDF	22 March 2019	13 February 2019
7	1002954-O	1	N	Mr X	1	1979	918	IDF	9 August 2018 and 13 February 2019	First Assessment
8	1003001-O	1	N	Ms X Miss X (daughter)	2	1966 2004	916 916	CD CD	15 November 2018 and 20 May 2019	First Assessment
9	1003077-O	N	N	Mr X	1	1971	758	IDF	27 March 2019	First Assessment
10	1003083-O	N	N	Mr X	1	1977	732	IDF	1 April 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD) and Temporary Protection visa (TPV).

**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	Ms X
Ombudsman ID	1000894-O1
<p>Ms X was detained in November 2011 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than seven years.</p> <p>Following reconsideration, Ms X's Temporary Protection visa application was refused under s 501 of the <i>Migration Act 1958</i> in July 2018.</p> <p>In October 2018 the Administrative Appeals Tribunal (AAT) set aside the delegate's decision and substituted it with a decision that Ms X's application not be refused under s 501.</p> <p>While acknowledging the serious nature of her criminal offences and behavioural concerns in detention, the AAT noted Ms X's mental health concerns at the time and found that her prospect of reoffending and risk of harm to the community was low. The AAT noted other considerations weighing in favour of a decision not to refuse Ms X's application, including the adverse impact of prolonged detention on her mental health and Australia's <i>non-refoulement</i> obligations under international law.</p> <p>The Department of Home Affairs' (the Department) report of 17 December 2018 advised it had commenced reconsidering Ms X's application.</p> <p>The Ombudsman's previous assessment recommended that given her mental health concerns, the Department consider placing Ms X in a detention facility that would provide single occupancy accommodation and ensuite ablutions. If this could not be provided, the Ombudsman recommended that the Department consider alternative placement options such as Facility Z.</p> <p>On 15 October 2018 the Minister advised in a tabling statement that Ms X had been provided with single room accommodation with ensuite ablutions. The Minister further advised that the Department was assessing Ms X's case for referral under s 195A for the grant of a bridging visa.</p> <p>The Department's report of 17 December 2018 advised it was preparing a submission for the Minister, briefing him on a number of long-term detention cases including Ms 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 International Health and Medical Services (IHMS) report advised that Ms X received treatment for complex 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. Ms X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.2. If Ms X is not granted a bridging visa, her case be referred to the Minister for consideration under s 197AB for the grant of a community placement.3. If a bridging visa or community placement are not deemed appropriate, the Department consider alternative placement options where Ms X's needs can be appropriately managed.	

Name	Mr X
Ombudsman ID	1002854-O1
<p>Mr X was detained in June 2012 after arriving in Australia by sea and has remained in immigration detention facility for a cumulative period of more than three years.</p> <p>In March 2014 Mr X's Protection visa application was refused and in May 2015 the Refugee Review Tribunal affirmed the refusal.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court which was dismissed in July 2015.</p> <p>In January 2017 Mr X requested removal from Australia.</p> <p>The Department of Home Affairs' (the Department) report of 15 March 2019 advised that as Mr X has spent lengthy periods residing in Country A, authorities of Country B had not been able to establish his citizenship and were refusing to issue a travel document. The report further advised that Mr X is part of a cohort of nationals of Country B that have spent significant time in Country A. The Department has requested assistance from consular officials in Country B in obtaining identity documents for all protracted removal cases, including Mr X's.</p> <p>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 Final Departure Bridging visa. At the time of the Department's report the matter remained ongoing.</p> <p>The International Health and Medical Services report advised that Mr X did not receive treatment for any major mental or physical health concerns during the reporting period.</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>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 Final Departure Bridging visa be expedited.	

Name	Mr X
Ombudsman ID	1002954-O
<p>Mr X was detained in September 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's bridging visa was cancelled under s 116 of the <i>Migration Act 1958</i> in December 2016 following criminal charges.</p> <p>The Department of Home Affairs' (the Department) report of 9 August 2018 advised that in October 2017 all charges against Mr X were withdrawn. He was now a witness in a trial and is subject to a Criminal Justice Stay Certificate which is preventing his removal from Australia.</p> <p>In August 2018 Mr X's Safe Haven Enterprise visa (SHEV) application was refused under s 501. In October 2018 the Administrative Appeals Tribunal (AAT) set aside the delegate's decision and remitted the matter to the Department with the direction that Mr X's application not be refused under s 501.</p> <p>The AAT found that in the absence of any criminal conduct or relevant past or present general conduct, there was no evidence before it that would reasonably satisfy it that Mr X fails the character test. The AAT noted other considerations weighing in favour of a decision not to refuse Mr X's application, including that the degree of risk that Mr X would engage in criminal conduct was remote, and Australia's <i>non-refoulement</i> obligations under international law.</p> <p>The Department's report of 13 February 2019 advised it was preparing a submission for the Minister, briefing him on whether to personally consider the decision of the AAT and to consider refusal of Mr X's SHEV application under s 501A.</p> <p>The International Health and Medical Services report stated that Mr X received treatment for complex 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>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>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa or under s 197AB for the grant of a community placement.	

Name	Ms X Miss X (daughter)
Ombudsman ID	1003001-O
<p>Ms X and Miss X were detained in September 2013 after arriving in Australia by sea with Ms X's husband, Mr X and their son, Master X. Ms X and Miss X have remained in immigration detention, in a detention facility and the community, for a cumulative period of more than two years.</p> <p>Ms X, Mr X and their two children were transferred to a Regional Processing Country (RPC) in September 2013. Ms X and Miss X were returned to Australia for medical treatment in November 2016.</p> <p>Mr X and Master X were returned to Australia for medical treatment in March 2017 and reside with Ms X and Miss X in a community placement. They are subject to a separate Ombudsman assessment as a result of their differing number of days in detention.</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 been found to be refugees.</p> <p>The Department's report further advised that, in light of the vulnerabilities associated with their medical conditions, 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 Ms X and Miss X received treatment for complex physical and mental health concerns.</p> <p>The Ombudsman notes with concern that Ms X's and Miss X'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. Explore options to address the prolonged detention of Ms X and Miss X.	