

Our ref: 486N-1001513-O4

23 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 34 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 11 recommendations in relation to eight 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*.

I note that Mr X (1002240-O3) was found to be owed protection under the Refugee Convention and complementary protection criterion in June 2014. However, his Protection visa application was refused under s 501 of the Act in July 2015 following criminal convictions. In December 2016 the Federal Court remitted the refusal decision to the Department of Home Affairs (the Department) with the direction that his Protection visa application be reconsidered. In February 2018 Mr X's case was referred for a fresh protection claims assessment incorporating legal advice regarding whether his case may be considered ineligible under s 36(2C) following the passing of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act* on 15 December 2014.

The Department advised in November 2018 that Mr X's case will be assessed against the s 195A guidelines for consideration for the grant of a bridging visa. As a result I do not consider it appropriate to make a recommendation at this time. However, I note Mr X's prolonged immigration detention poses a risk to his physical and mental health.

Mr X's (1002903-01) removal is likely to be protracted because involuntary removal to Country A is not currently possible. I note his protracted removal and continued placement in immigration detention poses a risk to his physical and mental health.

Yours sincerely



Jaala Hinchcliffe
Acting 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	1001513-O4	0	Mr X Ms X (wife)	2	1969 1963	2,008 2,008	CD CD	12 December 2018	Awaiting Tabling
2	1001583-O3	0	Mr X	1	1993	1,824	SHEV	14 June 2018	25 June 2018
3	1002205-O3	1	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)	4	1979 1980 2008 2015	1,797 1,825 1,825 1,288	CD CD CD CD	24 April 2018 and 29 October 2018	21 March 2018
4	1002240-O3	0	Mr X	1	1968	1,825	IDF	25 May 2018 and 26 November 2018	25-Jun-18
5	1002301-O3	0	Mr X	1	1978	1,829	IDF	28 July 2018 and 30 January 2019	9 May 2018
6	1002368-O4	0	Mr X	1	1993	2,192	IDF	25 October 2018	13 February 2019
7	1002376-O2	1	Mr X	1	1992	1,646	CD	17 April 2018 and 22 October 2018	21 March 2018
8	1002386-O3	2	Mr X Ms X (wife) Master X (son) Master X (son)	4	1983 1986 2011 2015	1,643 1,643 1,643 1,259	CD CD CD CD	30 April 2018 and 30 October 2018	18 June 2018
9	1002463-O3	0	Mr X	1	1998	1,460	IDF	15 November 2018	21 February 2019
10	1002519-O2	0	Ms X	1	1972	1,276	FDBV	6 April 2018	7 February 108
11	1002527-O2	1	Ms X Mr X (son) Master X (son) Master X (son)	4	1977 2002 2003 2006	1,460 1,460 1,460 1,460	CD CD CD CD	11 April 2018 and 12 October 2018	18 June 2018
12	1002552-O2	1	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)	4	1977 1977 2008 2015	1,466 1,466 1,466 1,210	CD CD CD CD	6 May 2018 and 13 December 2018	18 June 2018

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Safe Haven Enterprise visa (SHEV), Global Special Humanitarian visa (GSHV) and Final Departure Bridging visa (FDBV).

Attachment A

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
13	1002789-O1	1	Ms X Master X (son)	2	1992 2016	1,095 879	CD CD	23 April 2018, 28 May 2018 and 22 October 2018	9 May 2018
14	1002804-O1	2	Mr X	1	1996	1,103	CD	23 May 2018 and 30 November 2018	21 March 2018
15	1002808-O1	2	Mr X	1	1985	1,095	IDF	11 June 2018 and 10 December 2018	25 June 2018
16	1002813-O2	0	Mr X	1	1992	1,095	IDF	17 December 2018	21 February 2019
17	1002833-O1	0	Mr X	1	1975	1,101	IDF	1 August 2018 and 6 February 2019	26 November 2018
18	1002875-O	0	Mr X	1	1991	731	FDBV	10 April 2018	First Assessment
19	1002903-O1	0	Mr X	1	1980	918	IDF	20 November 2018	21 February 2019
20	1003015-O	0	Mr X	1	1994	731	GSHV	3 December 2018	First Assessment

**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 Ms X (wife) Miss X (daughter) Miss X (daughter)
Ombudsman ID	1002205-03
<p>Mr X, Ms X and their eldest daughter were detained in July 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. Mr X and Ms X's second daughter was born in Australia and detained in April 2015. She has remained in immigration detention in the community for more than three and a half years.</p> <p>Mr X, Ms X and their eldest daughter were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. The Department of Home Affairs (the Department) advised that because the family arrived after 19 July 2013 the family remains liable for transfer back to a RPC on completion of their medical treatment.</p> <p>The Department advised that the family has undergone a Refugee Status Determination by the Government of an RPC and they 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 attending school.</p> <p>International Health and Medical Services advised that the family has been diagnosed with serious mental and physical health conditions that require ongoing specialist treatment and monitoring. A specialist noted that the stressors associated with the family's immigration status, health concerns and future in Australia has had a significant impact on Miss X's early development and will continue to impact her social and emotional development.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore all available options to address the prolonged detention of Mr X, Ms X and their two daughters.	

Attachment B

Name	Mr X
Ombudsman ID	1002376-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 and a half years.</p> <p>Mr X was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. In October 2018 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 has undergone a Refugee Status Determination by the Government of an RPC and has been found to be a refugee.</p> <p>IHMS has advised that Mr X requires ongoing treatment for complex mental health concerns.</p> <p>The Ombudsman notes with concern that the ongoing uncertainty of the immigration status of the Mr X 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. Explore all available options to address the prolonged detention of Mr X.	

Attachment B

Name	Mr X Ms X (wife) Master X (son) Master X (son)
Ombudsman ID	1002386-03
<p>Mr X, Ms X and their son 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 four and a half years. Mr X and Ms X's second son was born in Australia and detained in May 2015. He has remained in immigration detention in the community for more than three and a half years.</p> <p>The family 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 they 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 it is supporting the Government of an RPC to finalise the Refugee Status Determination of the family while they remain temporarily in Australia for medical treatment.</p> <p>International Health and Medical Services (IHMS) has advised that the family continued to receive treatment for complex 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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Work with the Government of an RPC to expedite the determination of the family's refugee status, noting that the family arrived in Australia in August 2013.2. Explore all available options to address the prolonged detention of Mr X, Ms X and their two sons.	

Attachment B

Name	Ms X Master X (son) Master X (son) Master X (son)
Ombudsman ID	1002527-O2
<p>Ms X and her three sons were detained in July 2014 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 four years.</p> <p>The family 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 the family arrived after 19 July 2013 they remain liable for transfer back to an RPC on completion of their medical treatment.</p> <p>The Department advised that the family has undergone a Refugee Status Determination by the Government of an RPC and they 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> due to Ms X's ongoing medical requirements and her vulnerability as a single parent.</p> <p>International Health and Medical Services (IHMS) advised that Ms X required treatment for complex physical and mental health concerns. IHMS further noted that the family's health and welfare was at significant risk of deterioration if returned to an RPC.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore all available options to address the prolonged detention of Ms X and her three sons.	

Attachment B

Name	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)
Ombudsman ID	1002552-O2
<p>Mr X, Ms X and their two daughters were detained in July 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 four years.</p> <p>The family 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 the family arrived after 19 July 2013 they remain liable for transfer back to a Regional Processing Country on completion of their medical treatment.</p> <p>The Department advised that the family has undergone a Refugee Status Determination by the Government of an RPC and they have been found to be refugees.</p> <p>International Health and Medical Services (IHMS) advised that the family required treatment for complex physical health concerns.</p> <p>Ms X has required treatment for mental health concerns. IHMS advised that Ms X's mental health was affected by concerns about her future and the uncertainty surrounding her family's immigration status.</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>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Explore all available options to address the prolonged detention of Mr X, Ms X and their two daughters.	

Attachment B

Name	Ms X Master X (son)
Ombudsman ID	1002789-01
<p>Ms X was detained in October 2013 after arriving in Australia by sea. Ms X has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than three years. Master X was born in Australia and detained in May 2016 and has remained in immigration detention in the community for more than two years.</p> <p>Ms 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 Ms X arrived after 19 July 2013 Ms X and her son remain liable for transfer back to an RPC on completion of their medical treatment.</p> <p>The Department advised that Ms X has undergone a Refugee Status Determination by the Government of an RPC and has been found to be refugee.</p> <p>The Department further advised that they will not be considered for the grant of Final Departure Bridging visas under s 195A of the Migration Act 1958 while Ms X's son remains under the age of five who is not attending school.</p> <p>International Health and Medical Services (IHMS) advised that Ms X required treatment for significant 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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none">1. Explore all available options to address the prolonged detention of Ms X and her son.	

Attachment B

Name	Mr X
Ombudsman ID	1002804-O1
<p>Mr X was detained in July 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 three 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 Mr X remains liable for transfer back to an RPC on completion of his medical treatment.</p> <p>The Department advised it is supporting the Government of an RPC to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.</p> <p>The Department advised that Mr X was not being considered for the grant of a Final Departure Bridging visa under s 195A of the <i>Migration Act 1958</i> due to the vulnerabilities associated with his medical concerns.</p> <p>International Health and Medical Services advised that Mr X received ongoing treatment for multiple mental health concerns.</p> <p>The Ombudsman notes with concern that the ongoing uncertainty of the immigration status of the Mr X 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. Work with the Government of an RPC to expedite the determination of Mr X's refugee status, noting that he arrived in Australia in July 2013.2. Explore all available options to address the prolonged detention of Mr X.	

Name	Mr X
Ombudsman ID	1002808-O1
<p>Mr X was first detained in April 2010 after arriving in Australia by sea and has remained in immigration detention for a cumulative period of more than three years.</p> <p>In December 2010 Mr X was found to be owed protection under the Refugee Convention through a non-statutory process. He was granted a Protection visa and released from detention in April 2011.</p> <p>In December 2016 Mr X's Protection visa was mandatorily cancelled under s 501(3A) of the <i>Migration Act 1958</i> on character grounds and he was re-detained following his release from a correctional facility in December 2016.</p> <p>In December 2016 Mr X lodged a request for revocation of the cancellation of his visa.</p> <p>In August 2017 the Department of Home Affairs (the Department) notified Mr X of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.</p> <p>In April 2018 Mr X provided a response to information requested from the Department through his authorised representative.</p> <p>In June 2018 the Department advised that the assessment of Mr X's ITOA was ongoing.</p> <p>At the time of the Department's latest report, dated 10 December 2018, the assessment of Mr X's ITOA remained ongoing.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continues to receive treatment for multiple serious mental health concerns and reiterated advice about placement in Facility X.</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 the resolution of Mr X's ITOA, noting that the assessment has remained ongoing since August 2017.2. The Department assess the appropriateness of Mr X's detention placement at Facility X in light of medical advice.	