

Our ref: 486N-1000997-02

17 June 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 concerning 20 cases on the schedule (Attachment A) regarding 33 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 10 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. 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 <sup>1</sup>	Detention status <sup>2</sup>	Date of 486N report	Date last assessment tabled
1	1000997-O2	N	N	Mr X	1	1996	1,645	IDF	1 October 2018	26 November 2018
2	1002227-O2	1	N	Ms X	1	1995	1,832	CD	10 November 2017, 11 May 2018 and 19 November 2018	29 November 2017
3	1002270-O3	1	N	Mr X	1	1987	1,825	CD	18 June 2018 and 19 December 2018	25 June 2018
4	1002473-O2	1	N	Mr X Ms X (wife) Master X (son)	3	1979 1982 2012	1,645 1,645 1,645	CD CD CD	14 August 2018 and 14 February 2019	18 June 2018
5	1002497-O2	1	N	Mr X	1	1985	1,643	CD	5 September 2018 and 7 March 2019	25 June 2018
6	1002500-O2	1	N	Ms X Mr X (husband) Master X (son)	3	1977 1979 2014	1,652 1,645 1,351	CD CD CD	17 September 2018 and 20 March 2019	25 June 2018
7	1002595-O2	N	N	Mr X	1	1981	1,469	IDF	6 August 2018 and 14 February 2019	26 November 2018
8	1002597-O1	N	N	Mr X Ms X (wife) Miss X (daughter) Master X (son) Master X (son) Master X (son)	6	1984 1982 2009 2010 2013 2015	1,467 1,467 1,467 1,467 1,467 1,467	CD CD CD CD CD CD	7 February 2018, 9 August 2018 and 15 February 2019	7 February 2018
9	1002609-O1	N	N	Mr X Ms X (wife)	2	1981 1982	1,468 1,468	CD CD	26 February 2018, 27 August 2018 and 6 March 2019	21 March 2018
10	1002614-O1	1	N	Mr X	1	1984	1,469	CD	2 March 2018, 3 September 2018 and 12 March 2019	7 February 2018
11	1002735-O1	N	N	Mr X	1	1982	1,280	IDF	14 August 2018 and 14 February 2019	18 June 2018
12	1002775-O	1	N	Ms X Miss X (daughter)	2	1981 2015	1,277 981	CD CD	3 October 2017, 3 April 2018, 25 July 2018, 6 October 2018 and 2 April 2019	First Assessment
13	1002835-O1	N	N	Mr X	1	1979	1,103	IDF	13 February 2019	26 November 2018
14	1002848-O1	N	N	Mr X	1	1993	1,105	IDF	25 August 2018 and 6 March 2019	26 November 2018

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

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

## Attachment A

No	Ombudsman ID	Recs	Comments	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
15	1002924-O	1	N	Mr X Ms X (wife) Miss X (daughter)	3	1985 1986 2017	918 918 732	CD CD CD	12 June 2018, 17 December 2018 and 26 February 2019	First Assessment
16	1002942-O	N	N	Mr X	1	1990	919	IDF	16 July 2018 and 21 January 2019	First Assessment
17	1002946-O	N	N	Mr X	1	1971	917	TPV	23 July 2018 and 25 January 2019	First Assessment
18	1002975-O1	1	N	Mr X	1	1991	917	IDF	15 March 2019	Awaiting Tabling
19	1003070-O	2	N	Ms X	1	1985	1,644	CD	5 September 2018 and 8 March 2019	25 June 2018
20	2000005-O1	N	Y	Mr X	1	1975	1,277	IDF	13 June 2018 and 12 December 2018	9 May 2018

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO  
THE MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS**  
*Under s 486O of the Migration Act 1958*

<b>Name</b>	Ms X
<b>Ombudsman ID</b>	1002227-02
<p>Ms X was detained in September 2013 after arriving in Australia by sea. She has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than five 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) report advised that as Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.</p> <p>The Department's report advised that Ms X has undergone a Refugee Status Determination by the Government of an RPC and has been found to be a refugee.</p> <p>The International Health and Medical Services report stated that Ms X requires ongoing treatment for complex mental health concerns.</p> <p>The Department's report further advised that, in light of the vulnerabilities associated with her medical conditions, Ms X will not be considered for the grant of a Final Departure Bridging visa under s 195A of the <i>Migration Act 1958</i>.</p> <p>The Ombudsman notes with concern that Ms X's ongoing uncertainty about her immigration status poses a significant risk to her 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 options to address the prolonged detention of Ms X.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002270-03
<p>Mr X was detained in December 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 five years.</p> <p>Mr X was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment.</p> <p>Mr X's claim for protection has not been assessed. Under the current government policy, Mr X is not eligible to have his protection claims assessed by Australia.</p> <p>Mr X has ongoing health concerns that require treatment in Australia because there are no medical services available in an RPC to treat his condition.</p> <p>The Department of Home Affairs' (the Department) report advised it continues to explore options to resolve Mr X's immigration status. The Ombudsman notes that the Department has been exploring options to resolve Mr X's circumstances for over two years.</p> <p>The Department's report further advised that Mr X will remain in the community because it is the least restrictive form of detention and provides him with appropriate health and welfare support services.</p> <p>The Ombudsman notes with concern that prolonged immigration detention in circumstances that lack certainty or progression poses a significant risk to an individual's mental and physical health.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"><li>1. Identify next steps to regularise or resolve Mr X's immigration status.</li></ol>	

Attachment B

<b>Name</b>	Mr X Ms X (wife) Master X (son)
<b>Ombudsman ID</b>	1002473-02
<p>Mr X, Ms X and their son were detained in November 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.</p> <p>Mr X, Ms X and their son were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. 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 underwent a Refugee Status Determination by the Government of an RPC and they have been found to be refugees.</p> <p>The International Health and Medical Services' report advised that the family did not receive treatment for any major ongoing mental or physical health concerns during this reporting period.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"><li>1. Expedite the consideration of options to resolve the family's immigration status.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002497-O2
<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 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) 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 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 further advised that the Department intends to review cases that could be managed in the community through the grant of a Final Departure Bridging visa. The Department's report stated that should Mr X's case meet the requirements, it will be referred to the Minister for consideration under s 195A of the <i>Migration Act 1958</i>.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for ongoing physical health concerns.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"><li>1. Expedite the consideration of options to resolve Mr X's immigration status.</li></ol>	

<b>Name</b>	Ms X Mr X (husband) Master X (son)
<b>Ombudsman ID</b>	1002500-O2
<p>Ms X and Mr X were detained in December 2013 after arriving to 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.</p> <p>Ms X and Mr X were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their sons, Master X and Master X, were born in Australia following their temporary transfer. Master X 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) report advised that as Ms X and Mr X arrived after 19 July 2013 the family remain liable for transfer back to an RPC on completion of their treatment.</p> <p>The Department's report advised that Ms X and her family have undergone a Refugee Status Determination by the Government of an RPC and have been found to be refugees. The report further advised that their youngest son, Master X is under consideration for Derivative Refugee Status by the Government of an RPC.</p> <p>In November 2015 Ms X and Mr X lodged an application for Australian citizenship on behalf of their older son, under the statelessness provisions of the <i>Australian Citizenship Act 2007</i>. At the time of the Department's latest report this application remained under consideration.</p> <p>The Department's report further advised that, while they have children under the age of five who are not yet attending school, the family will not be considered for the grant of Final Departure Bridging visas under s 195A.</p> <p>The International Health and Medical Services report advised that the family require ongoing treatment and monitoring for physical and mental health concerns.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> <li>1. Explore options to address the prolonged detention of Ms X, Mr X and their children.</li> </ol>	



<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002614-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 four 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) 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 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 by the Government of an RPC determined that Mr X is a refugee.</p> <p>The Department's report further advised that, in light of the vulnerabilities associated with his mental health, Mr X will not be considered for the grant of a Final Departure Bridging visa under s 195A of the <i>Migration Act 1958</i>.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for multiple mental health concerns.</p> <p>A treating counsellor advised that return to an immigration detention facility would lead to a significant deterioration in Mr X's mental health and increase his risk of suicide.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"><li>1. Explore options to address the prolonged detention of Mr X.</li></ol>	

<b>Name</b>	Ms X Miss X (daughter)
<b>Ombudsman ID</b>	1002775-O
<p>Ms X was detained in August 2013 after arriving in Australia by sea with her husband, Mr X and their son. Ms X has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than three and a half years. Mr X and their son are subject to a separate Ombudsman assessment as a result of their differing number of days in detention.</p> <p>Ms X, Mr X and their son were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their daughter, Miss X was born in Australia following their temporary transfer. Miss X has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than three years.</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 they have been found to be refugees.</p> <p>The report further advised that, while they have children under the age of five who are not yet attending school, 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 her daughter received treatment for complex mental health concerns.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> <li>1. Explore options to address the prolonged detention of Ms X and her daughter.</li> </ol>	

<b>Name</b>	Mr X Ms X (wife) Miss X (daughter)
<b>Ombudsman ID</b>	1002924-O
<p>Mr X and Ms X 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 two and a half years.</p> <p>Mr X and Ms X were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their two children were born in Australia following their temporary transfer. Mr X and Ms X's youngest child 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) report advised that as Mr X and Ms X arrived after 19 July 2013 the family remains liable for transfer back to an RPC on completion of their treatment.</p> <p>The Department's report advised that Mr X and Ms X have undergone a Refugee Status Determination by the Government of an RPC and have been found to be refugees.</p> <p>The Department's report further advised that, while they have children under the age of five who are not yet attending school, the family will not be considered for the grant of Final Departure Bridging visas under s 195A.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X and Ms X require ongoing treatment for complex mental and physical health concerns. IHMS advised that Ms X's mental health concerns are associated with her situation in community detention and the lack of purposeful activity due to the restrictions imposed.</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><b>Recommendation</b></p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"><li>1. Explore options to address the prolonged detention of Mr X, Ms X and their two children.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002975-01
<p>Mr X was detained in September 2016 following his release from a correctional facility and has remained in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in August 2016 following criminal charges. In September 2016 Mr X lodged a request for revocation of the cancellation of his visa. In October 2017 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>In November 2017 Mr X lodged a Protection visa application which was refused in October 2018. In November 2018 Mr X sought merits review of the refusal decision at the Administrative Appeals Tribunal. At the time of the Department of Home Affairs' (the Department) report, dated 15 March 2019, the matter remained ongoing.</p> <p>The Department's report advised that, based on an assessment of his risk to the community due to his criminal history, Mr X remains in an immigration detention facility.</p> <p>Mr X is currently placed at Facility Y. The Department's report advised that Mr X had verbalised a preference to return to City A however there was no record of a formal request.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for mental health concerns associated with family separation.</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. The Department consider, in consultation with Mr X, transferring him to Facility Z so he can reside closer to his family and support network.</li></ol>	

<b>Name</b>	Ms X
<b>Ombudsman ID</b>	1003070-O
<p>Ms X was detained in July 2013 after arriving in Australia by sea. She 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>Ms X was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. The Department of Home Affairs' (the Department) report advised that as Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her treatment.</p> <p>The Department's report advised that Ms 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 further advised that, in light of the vulnerabilities associated with her medical conditions, Ms X will not be considered for the grant of a Final Departure Bridging visa under s 195A of the <i>Migration Act 1958</i>.</p> <p>The International Health and Medical Services (IHMS) report advised that Ms X required treatment for ongoing complex mental health concerns.</p> <p>The Department's report advised that Ms X requested to be transferred to a location closer to her support networks. IHMS supported this request and reiterated that it would be significantly beneficial in light of her ongoing mental health concerns.</p> <p>The Ombudsman notes with concern that Ms X's ongoing uncertainty about her immigration status poses a significant risk to her 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. Refer Ms X's case to the Minister for consideration to vary her community placement under s 197AD so she can be located closer to her support networks.</li><li>2. Explore options to address the prolonged detention of Ms X.</li></ol>	

**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*

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	2000005-01
<p>Mr X was detained in June 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than three and a half years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in June 2015. In June 2015 Mr X requested revocation of the cancellation.</p> <p>In October 2016 an International Treaties Obligation Assessment (ITOA) found that Mr X is owed <i>non-refoulement</i> obligations. The Department of Home Affairs' (the Department) report advised that an identity assessment was initiated following the finalisation of the ITOA as it had found Mr X to be stateless.</p> <p>In November 2016 the Department notified Mr X that his case engages Australia's <i>non-refoulement</i> obligations.</p> <p>In November 2016 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>In December 2016 Mr X requested judicial review by the Federal Circuit Court of the Assistant Minister's decision to refuse to revoke the cancellation of his visa. In February 2017 the matter was referred to the Federal Court (FC).</p> <p>In June 2017 the Department commenced an assessment of Mr X's case against the s 195A guidelines for the grant of a bridging visa.</p> <p>In September 2017 the FC set aside the Assistant Minister's decision after identifying a probable error of law and remitted the matter to the Department for reconsideration.</p> <p>The Department's report advised that in October 2017 Mr X's case was not referred to the Minister for consideration under s 195A for the grant of a bridging visa, as referral was considered inappropriate following the decision of the FC.</p> <p>In February 2018 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa a second time.</p> <p>The Department's report of 13 June 2018 stated that Mr X is not able to be involuntarily removed as he has been found to be owed <i>non-refoulement</i> obligations.</p> <p>In November 2018 Mr X lodged an application for a Protection visa.</p> <p>The Department's report of 12 December 2018 advised that processing of Mr X's Protection visa application was ongoing. The report further advised that Mr X has been assessed as posing a high risk of harm to the community due to his history of criminal convictions which led to the cancellation of his visa.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X continues to receive treatment for significant mental health concerns. The report further advised that Mr X was prescribed medication and at times required assistance from the mental health team due to acute situational stressors. IHMS reiterated advice from a psychiatrist in May 2017 that Mr X's symptoms are likely to worsen in the detention setting.</p> <p>In April and November 2018 the IHMS reports advised that Mr X's mental health was adversely affected by his detention placement.</p>	

Attachment C

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	2000005-O1
<p>Noting that Mr X is owed <i>non-refoulement</i> obligations and is adversely affected by his current placement, the Ombudsman raises the concern that he is likely to remain in immigration detention for a prolonged period while his immigration matters remain ongoing. This poses a significant risk to his health and welfare.</p> <p>In light of the nature of Mr X's criminal offences the Ombudsman does not consider it appropriate to make a recommendation about the grant of a bridging visa or a community placement at this time.</p>	