

Our ref: 486N-1000727-O3

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 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 eight recommendations in relation to six 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 Mr X's (1002177-O3) removal is likely to be protracted because involuntary removal to Country A is not currently possible. I also note his protracted removal and continued placement in immigration detention poses a risk to his physical and mental health.

Mr X (1002645-O1) has no ongoing matters before the Department of Home Affairs (the Department), courts or tribunals and is on an involuntary removal pathway. The Department advised that there have been significant issues in obtaining a travel document for Mr X and it continued to liaise with officials from Country B to discuss his case. International Health and Medical Services advised that Mr X continued to require care for complex physical health concerns. On 14 March 2019 the Department advised that Mr X had been approved for a Tier 4 specialised detention placement. In light of this determination, a recommendation for a change of placement for Mr X is not considered appropriate at this time.

Mr X's (1002929-O) visa was cancelled under s 501 of the Act. Mr X has no ongoing matters before the Department, the courts or tribunals. An International Treaties Obligations Assessment found that Australia has *non-refoulement* obligations in respect of Mr X which is a barrier to his removal from Australia. Given the nature of his criminal offences, I do not consider it appropriate to make a recommendation in relation to the grant of a bridging visa or a community placement at this time. However, 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 <sup>1</sup>	Detention status <sup>2</sup>	Date of 486N report	Date last assessment tabled
1	1000727-O3	0	Mr X	1	1966	2,921	Removed	22 May 2018 and 27 November 2018	18 June 2018
2	1002177-O3	0	Mr X	1	1989	1,825	CD	28 September 2018	26 November 2018
3	1002200-O4	0	Mr X	1	2003	2,008	CD	29 October 2018	13 February 2019
4	1002391-O2	0	Mr X Ms X (wife) Miss X (daughter)	3	1980 1986 2009	1,458 1,458 1,458	FDBV FDBV FDBV	2 May 2018	21 March 2018
5	1002397-O2	2	Mr X	1	1966	1,643	IDF	7 May 2018 and 8 November 2018	21 March 2018
6	1002399-O2	0	Mr X	1	1968	1,640	FDBV	7 May 2018	21 March 2018
7	1002458-O2	2	Mr X Ms X (wife) Master X (son)	3	1983 1982 2015	1,649 1,649 1,155	CD CD CD	23 July 2018 and 1 February 2019	18 June 2018
8	1002533-O2	1	Mr X Ms X (wife) Master X (son) Miss X (daughter) Miss X (daughter)	5	1975 1987 2011 2013 2015	1,461 1,461 1,461 1,461 1,162	CD CD CD CD CD	20 April 2018 and 22 October 2018	9 May 2018
9	1002547-O2	1	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)	4	1980 1977 2010 2015	1,465 1,462 1,462 1,149	CD CD CD CD	31 May 2018 and 6 December 2018	18 June 2018
10	1002581-O2	0	Mr X	1	1971	1,473	IDF	23 July 2018 and 1 February 2019	25 June 2018
11	1002645-O1	0	Mr X	1	1958	1,286	IDF	23 April 2018 and 30 October 2018	21 March 2018
12	1002666-O1	1	Mr X Ms X (wife) Master X (son)	3	1982 1981 2015	1,277 1,277 1,159	CD CD CD	8 May 2018 and 7 November 2018	21 March 2018
13	1002861-O1	0	Mr X	1	1974	917	Removed	18 December 2018	26 November 2018

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

<sup>2</sup> Immigration Detention Facility (IDF), Community Placement (CD), Removed, 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
14	1002884-O1	0	Mr X	1	1961	912	IDF	19 October 2018	13 February 2019
15	1002923-O1	0	Mr X	1	1984	914	IDF	11 December 2018	Awaiting Tabling
16	1002926-O1	1	Mr X	1	1988	912	IDF	11 December 2018	21 February 2019
17	1002929-O	0	Mr X	1	1992	914	IDF	16 June 2018 and 17 December 2018	First Assessment
18	1002996-O	0	Mr X	1	1995	912	IDF	5 November 2018	First Assessment
19	1003011-O	0	Mr X	1	1964	730	IDF	28 November 2018	First Assessment
20	1003020-O	0	Mr X	1	1994	730	IDF	10 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*

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002397-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) 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 not to be a refugee. Mr X has applied for merits review of this decision.</p> <p>The Department further advised that Mr X's case was being assessed against the ministerial guidelines for a possible referral to the Minister under s 197AB of the <i>Migration Act 1958</i> for the grant of a community placement.</p> <p>International Health and Medical Services (IHMS) advised that Mr X received ongoing treatment for complex physical and mental health concerns.</p> <p>On 20 July 2018 an IHMS psychiatrist recommended that Mr X be placed in the community to benefit his mental health.</p> <p>The Ombudsman notes with concern that Mr X is likely to remain in immigration detention for a prolonged period. This 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. Mr X's case be referred to the Minister for consideration under s 197AB for the grant of a community placement.</li><li>2. The Department explore all available options to address the prolonged detention of Mr X.</li></ol>	

Attachment B

<b>Name</b>	Mr X Ms X (wife) Master X (son)
<b>Ombudsman ID</b>	1002458-O2
<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 four and a half years.</p> <p>They were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their son was born in Australia following their temporary transfer.</p> <p>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 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>IHMS have advised that Mr X and Ms X require ongoing treatment for complex mental health concerns.</p> <p>IHMS advised that Ms X would like to be located in City A where she has a support network of close friends and family. Ms X has reported that her current community accommodation reminds her of her experiences at an RPC as it is located near a barbed wire fence. She isolates herself to avoid intrusive memories or thoughts about her experiences at an RPC.</p> <p>A counsellor noted that if Ms X and her family were moved to City A, her coping strategies would be more effective and her psychological health would improve.</p> <p>IHMS advised that a request for transfer was pending approval by the Australian Border Force.</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. Vary the family's community placement under s 197AD of the <i>Migration Act 1958</i> to a location in City A to better support their mental health.</li><li>2. Explore all available options to address the prolonged detention of the family.</li></ol>	

Attachment B

<b>Name</b>	Mr X Ms X (wife) Master X (son) Miss X (daughter) Miss X (daughter)
<b>Ombudsman ID</b>	1002533-02
<p>Mr X, Ms X and their three children were detained in October 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. On 22 October 2018 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 RPC on completion of their treatment.</p> <p>The Department advised 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>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>	

Attachment B

<b>Name</b>	Mr X Ms X (wife) Miss X (daughter) Miss X (daughter)
<b>Ombudsman ID</b>	1002547-02
<p>Mr X, Ms X and their first 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 four years.</p> <p>The family was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Mr X and Ms X's second daughter was born in Australia following their temporary transfer.</p> <p>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 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 Mr X and his 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>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:</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 two daughters.</li></ol>	



Attachment B

<b>Name</b>	Mr X Ms X (wife) Master X (son)
<b>Ombudsman ID</b>	1002666-01
<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 five 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 son was born in Australia following their temporary transfer.</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 Ms X's treatment.</p> <p>The Department advised that Mr X and Ms X have undergone a Refugee Status Determination by the Government of an RPC and have 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 a child under the age of five who is not yet attending school.</p> <p>International Health and Medical Services (IHMS) has advised that Ms X requires ongoing treatment for complex 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><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 son.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002926-01
<p>Mr X was detained in July 2016 following his release from a correctional facility and has remained in an immigration detention facility for more than two and a half years.</p> <p>Mr X's Protection visa application was refused in August 2016. The Administrative Appeals Tribunal (AAT) remitted Mr X's case to the Department of Home Affairs (the Department) for re-consideration with the direction that he satisfies the criteria under s 36(2) of the <i>Migration Act 1958</i>.</p> <p>In July 2018 Mr X's Protection visa application was refused under s 501 on character grounds. In October 2018 the AAT set aside and substituted the Department's decision on the basis that Mr X's Protection visa should not be refused under s 501.</p> <p>At the time of the Department's report, dated 11 December 2018, consideration of Mr X's Protection visa application remained ongoing.</p> <p>International Health and Medical Services (IHMS) advised that Mr X's mental health was exacerbated in the context of his prolonged Protection visa application outcome. Mr X also reported mental health concerns associated with his placement at Facility Y and his separation from his family in State A.</p> <p>IHMS recommended that Mr X be transferred to Facility Z for social and emotional support with his family. This recommendation was supported by the IHMS Area Medical Director.</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. Consideration be given to transferring Mr X to Facility Z to enable him to reside closer to his family and support networks.</li></ol>	