

Our ref: 486N-1001232-O4

18 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 19 cases on the schedule (Attachment A) regarding 39 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 19 cases on the schedule and has made a total of 11 recommendations in relation to nine 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	1001232-O4	N	N	Mr X	1	1988	2,199	IDF	7 February 2019	Awaiting Tabling
2	1001970-O3	N	N	Mr X	1	1988	2,018	SHEV	13 August 2018 and 21 February 2019	26 November 2018
3	1002314-O3	N	N	Mr X	1	1978	1,826	CD	16 August 2018 and 18 February 2019	15 October 2018
4	1002322-O2	1	N	Mr X	1	1994	1,830	CD	21 February 2018, 27 August 2018 and 28 February 2019	21 March 2018
5	1002343-O3	1	N	Mr X Ms X (wife) Ms X (daughter) Ms X (daughter) Master X (son) Miss X (daughter)	6	1980 1976 1998 2000 2012 2015	1,827 1,827 1,827 1,827 1,827 1,128	CD CD CD CD CD CD	16 September 2018 and 20 March 2019	25 June 2018
6	1002371-O3	2	N	Mr X Ms X (wife) Master X (son) Miss X (daughter)	4	1980 1981 2013 2015	1,825 1,825 1,825 1,340	CD CD CD CD	16 April 2018, 18 October 2018 and 18 April 2019	9 May 2018
7	1002506-O1	N	N	Ms X Mr X (husband) Master X (son) Miss X (daughter)	4	1983 1982 2006 2008	1,276 1,253 1,253 1,276	FDBV	25 August 2017 and 23 February 2018	13 September 2017
8	1002507-O2	1	N	Ms X	1	1985	1,645	CD	20 March 2018, 20 September 2018 and 26 March 2019	18 June 2018
9	1002509-O2	1	N	Mr X Ms X (wife) Miss X (daughter) Master X (son)	4	1984 1984 2008 2015	1,643 1,643 1,643 1,351	CD CD CD CD	24 September 2018 and 25 March 2019	25 June 2018

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Safe Haven Enterprise visa (SHEV), Resident Return Visa (RRV), Removed and Final Departure Bridging visa (FDBV).

Attachment A

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
10	1002598-O1	2	N	Mr X Ms X (wife) Master X (son) Miss X (daughter)	4	1978 1982 2008 2015	1,461 1,461 1,461 1,361	CD CD CD CD	7 February 2018, 9 August 2018 and 14 February 2019	7 February 2018
11	1002701-O1	N	N	Mr X	1	1990	1,279	IDF	29 June 2018 and 31 December 2018	21 March 2018
12	1002715-O1	N	N	Mr X	1	1978	1,285	IDF	16 July 2018 and 21 January 2019	9 May 2018
13	1002720-O1	1	N	Ms X Mr X (son)	2	1974 1998	1,284 1,284	CD CD	25 July 2018 and 30 January 2019	18 June 2018
14	1002943-O	N	N	Mr X	1	1972	914	RRV	19 July 2018 and 24 January 2019	First Assessment
15	1003040-O	N	N	Mr X	1	1977	737	Removed	27 January 2019	First Assessment
16	1003047-O	1	N	Ms X Master X (son)	2	1980 2017	730 738	CD CD	1 February 2019 and 28 February 2019	First Assessment
17	1003072-O	N	N	Mr X	1	1961	732	IDF	13 March 2019	First Assessment
18	1003073-O	N	N	Mr X	1	1988	738	IDF	20 March 2019	First Assessment
19	2000001-O1	1	N	Mr X	1	1970	1,277	IDF	13 June 2018 and 13 December 2018	21 March 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

Name	Mr X
Ombudsman ID	1002322-O2
<p>Mr X was detained in November 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. 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 to identify whether they could be managed in the community through the grant of a Final Departure Bridging visa. Mr X's case will be reviewed as part of this process and should his 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 complex physical and mental 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>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 Mr X.	

Name	Mr X Ms X (wife) Ms X (daughter) Miss X (daughter) Master X (son) Miss X (daughter)
Ombudsman ID	1002343-O3
<p>Mr X, Ms X and their three children 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.</p> <p>Mr X, Ms X and their children were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their fourth child, Miss X was born in Australia following their temporary transfer.</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 have been found to be refugees.</p> <p>The Department's report further advised that, while they have a child under the age of five who is 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 the family received treatment for complex physical and mental health concerns. In September 2018 a psychiatrist reported that Ms X had increasing worries about her future and remained distressed.</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>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 Mr X, Ms X and their children.	

Name	Mr X Ms X (wife) Master X (son) Miss X (daughter)
Ombudsman ID	1002371-O3
<p>Mr X, Ms X and their son 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.</p> <p>Mr X, Ms X and their son were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their daughters, Miss X and Miss X, were born in Australia following their temporary transfer. Miss 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 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 Mr X, Ms X and their two eldest children have undergone a Refugee Status Determination by the Government of an RPC and have been found to be refugees. The family was yet to apply to the Government of an RPC for derivative refugee status for their youngest child.</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 of the <i>Migration Act 1958</i>.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X was prescribed with medication for a chronic pain condition. He reported experiencing severe pain that was affecting his sleep and daily activities. He was referred for specialist review in February 2016, which remained pending at the time of the latest IHMS report dated April 2019.</p> <p>The IHMS report further advised that Ms X was referred to a specialist for review of a physical health condition and associated pain in 2017, which remained pending at the time of the latest IHMS report dated April 2019.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> 1. Work with IHMS to expedite pending specialist appointments to treat the family's health conditions, noting the significant delays since these referrals were made. 2. Explore options to address the prolonged detention of Mr X, Ms X and their children. 	

Name	Ms X
Ombudsman ID	1002507-O2
<p>Ms X was detained in October 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>International Health and Medical Services advised that Ms X received treatment for complex 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>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.	

Name	Mr X Ms X (wife) Miss X (daughter) Master X (son)
Ombudsman ID	1002509-O2
<p>Mr X, Ms X and their daughter 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 and a half years.</p> <p>Mr X, Ms X and their daughter 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 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 were found not to be refugees. Subsequent merits review by the Government of an RPC determined that the family are 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 report advised that the family received ongoing treatment for complex 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>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 Mr X, Ms X and their children.	

Name	Mr X Ms X (wife) Master X (son) Miss X (daughter)
Ombudsman ID	1002598-O1
<p>Mr X, Ms X and their son 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. Mr X and Ms X's daughters, Miss X and Miss X, were born in Australia following their temporary transfer. Miss 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 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 have been found to be refugees.</p> <p>The Department's report further advised that, while they have children 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 while Mr X was placed in an immigration detention facility, the family, living in the community, received treatment for complex mental health concerns. Treating medical professionals reported that the family's health and welfare was adversely affected by their separation. Mr X was reunified with his family in the community in November 2017.</p> <p>The IHMS report further advised that Mr X and his family reported feeling unsafe and uncomfortable in their community placement locality, particularly due to their isolation from other families of the same cultural and linguistic background. A treating counsellor recommended that a variation in the family's community placement address to be closer to their community would be beneficial for the family's wellbeing and sense of safety.</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>Recommendation</p> <p>The Ombudsman recommends that the Department:</p> <ol style="list-style-type: none"> 1. Refer the family's case to the Minister for consideration to vary their community placement address under s 197AD to enable them to be closer to their community for the benefit of the family's health and welfare. 2. Explore options to address the prolonged detention of Mr X, Ms X and their children. 	

Name	Ms X Mr X (son)
Ombudsman ID	1002720-O1
<p>Ms X and her son Mr X 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 three and a half years.</p> <p>Ms X and her 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 Ms X and her son 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's report advised that Ms X and her son have undergone a Refugee Status Determination by the Government of an RPC and have been found to be refugees.</p> <p>The International Health and Medical Services report advised that Ms X requires ongoing treatment for complex mental health concerns.</p> <p>The Department's report advised that, due to the vulnerabilities associated with Ms X's medical conditions, the family will not be considered for the grant of a bridging visa under s 195A of the <i>Migration Act 1958</i>.</p> <p>The Ombudsman notes with concern that Ms X and Mr 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 Mr X.	

Name	Ms X Master X (son)
Ombudsman ID	1003047-O
<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 two years.</p> <p>Ms X was transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment. Her son, Master X, was born in Australia following her temporary transfer.</p> <p>The Department of Home Affairs' (the Department) report advised that as Ms X arrived after 19 July 2013, she and her son remain liable for transfer back to an RPC on completion of her medical treatment.</p> <p>The Department's report further advised that Ms X has undergone a Refugee Status Determination by the Government of an RPC and was found to be a refugee. Master X received a positive derivative status in November 2018.</p> <p>The Department's report advised that Ms X and her son will not be considered for the grant of Final Departure Bridging visas under s 195A of the <i>Migration Act 1958</i> while the family unit includes a child under the age of five who is not yet attending school.</p> <p>The International Health and Medical Services report advised that Ms X required treatment for complex physical and mental health concerns. A psychiatrist advised that Ms X would be at risk of an adverse mental health outcome if returned to an RPC.</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>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 Master X.	

Name	Mr X
Ombudsman ID	2000001-O1
<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 years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in June 2015 following criminal convictions. In July 2015 Mr X requested revocation of the cancellation.</p> <p>In October 2016 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>In September 2017 Mr X requested judicial review by the Federal Court of the Assistant Minister's decision to refuse to revoke the cancellation of his visa. In May 2018 the matter was dismissed.</p> <p>The Department of Home Affairs' (the Department) report advised that on 16 October 2018 Mr X's case was found to meet the guidelines for referral to the Minister for consideration under s 195A for the grant of a bridging visa.</p> <p>The Department's report of 13 December 2018 advised that Mr X has no immigration matters before the Department for consideration. His case was referred for involuntary removal action as Mr X refuses to leave Australia voluntarily, however Mr X cannot be involuntarily removed as he has been assessed as stateless.</p> <p>The Department's report further advised that Mr X's case is intractable and was likely to result in prolonged detention without ministerial intervention. As a result a submission was being prepared for the Minister for consideration under s 195A for the grant of a bridging visa.</p> <p>The Department's report advised that Mr X remains in an immigration detention facility based on an assessment of his risk to the community due to his criminal history.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for ongoing physical health concerns and was provided with grief counselling following the death of a family member.</p> <p>The Ombudsman notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural 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, in light of the apparent intractability of his case.	