

Our ref: 486N-1000153-O2

7 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 26 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](#)).

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	1000153-O2	1	N	Mr X	1	1992	3,299	IDF	8 August 2018 and 19 February 2019	9 May 2018
2	1001302-O3	N	N	Mr X	1	1986	2,195	IDF	8 October 2018 and 12 April 2019	26 November 2018
3	1001899-O1	N	N	Mr X	1	1988	1,102	Removed	3 April 2019	Awaiting Tabling
4	1002416-O2	1	N	Mr X Ms X (wife) Master X (son)	3	1979 1981 2015	1,652 1,652 1,181	CD CD CD	12 September 2017, 23 November 2017, 24 May 2018 and 4 December 2018	18 October 2017
5	1002443-O2	1	N	Mr X	1	1991	1,652	CD	6 July 2018 and 14 January 2019	18 June 2018
6	1002460-O2	1	N	Mr X Ms X (wife) Miss X (daughter) Master X (son) Master X (son)	5	1973 1972 2000 2004 2015	1,646 1,646 1,646 1,646 1,317	CD CD CD CD CD	24 July 2018 and 26 January 2019	18 June 2018
7	1002608-O2	N	N	Mr X	1	1982	1,643	IDF	20 February 2019	21 February 2019
8	1002611-O1	1	N	Ms X	1	1992	1,465	CD	1 March 2018, 31 August 2018 and 7 March 2019	7 February 2018
9	1002707-O1	1	N	Mr X	1	1985	1,281	CD	9 July 2018 and 9 January 2019	9 May 2018
10	1002714-O2	N	N	Mr X	1	1959	1,285	IDF	21 January 2019	Awaiting Tabling
11	1002732-O2	N	N	Ms X	1	1978	1,277	IDF	4 February 2019	26 November 2018
12	1002747-O2	N	N	Mr X	1	1989	1,286	IDF	7 March 2019	Awaiting Tabling
13	1002843-O	2	N	Mr X	1	1964	1,108	CD	20 February 2018, 20 August 2018 and 4 March 2019	First Assessment
14	1002862-O1	N	N	Mr X	1	1981	1,105	IDF	26 March 2019	Awaiting Tabling
15	1002960-O	1	N	Mr X	1	1980	923	IDF	17 August 2018 and 26 February 2019	First Assessment
16	1002961-O	1	N	Mr X	1	1957	922	IDF	20 August 2018 and 26 February 2019	First Assessment
17	1003028-O	1	N	Mr X	1	1988	731	IDF	24 December 2018	First Assessment
18	1003061-O	N	N	Mr X	1	1973	744	IDF	8 March 2019	First Assessment
19	1003074-O	N	N	Mr X	1	1990	734	IDF	18 March 2018	First Assessment

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

<sup>2</sup> Immigration Detention Facility (IDF), Community Detention (CD) and Removed.

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
20	1003079-O	N	N	Mr X	1	1980	734	IDF	28 March 2019	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>	1000153-02
<p>Mr X was detained in February 2010 after arriving in Australia by sea and has remained in immigration detention, in a detention facility and the community, for more than nine years.</p> <p>Mr X was found not to be owed protection under the Refugee Convention through non-statutory processes in 2010. In April 2012 judicial review identified a probable error of law and remitted the matter for reconsideration. In August 2012 a third Independent Merits Review (IMR) determined that Mr X was not owed protection. Mr X's application for judicial review of the negative IMR was dismissed by the Federal Circuit Court (FCC) in July 2013.</p> <p>In April 2014 Mr X's community detention placement was revoked under s 197AD of the <i>Migration Act 1958</i> following criminal charges and he was transferred to an immigration detention facility. On 2 February 2015 the Department of Home Affairs' (the Department) advised that the charges against Mr X were withdrawn in December 2014.</p> <p>In June 2015 an International Treaties Obligations Assessment (ITOA) determined that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations and he was referred for involuntary removal action. In July 2015 the Department lodged an application with the Country A High Commission for an emergency travel document to enable Mr X's involuntary removal.</p> <p>In September 2015 Mr X lodged an application for judicial review by the FCC of the negative ITOA and sought an injunction preventing his removal from Australia. The Department advised that his scheduled involuntary removal was subsequently aborted.</p> <p>In October 2015 the FCC adjourned Mr X's judicial review as his case was affected by a Full Federal Court (FFC) judgment<sup>3</sup> which found that the ITOA process was procedurally unfair. The Minister appealed the FFC decision and on 27 July 2016 the High Court found that the ITOA process was not procedurally unfair.<sup>4</sup></p> <p>In June 2017 Mr X's Safe Haven Enterprise Visa application was refused and in November 2017 the Administrative Appeals Tribunal affirmed the refusal. Mr X's subsequent applications for judicial review were unsuccessful.</p> <p>The Ombudsman's previous assessment recommended that in light of the significant length of time Mr X has remained in detention and the absence of any behavioural or security concerns, the Minister consider Mr X's case under s 195A and grant him a bridging visa while he awaits the outcome of judicial review.</p> <p>On 7 May 2018 the Minister advised in a Tabling Statement that Mr X had recently been assessed against the section 195A guidelines for the possible grant of a Bridging visa and had been found not to meet the guidelines for referral.</p> <p>The Department's report of 19 February 2019 advised that since the revocation of Mr X's community placement in 2014, his case has been found not to meet the guidelines under s 195A for the grant of a bridging visa on two occasions.</p>	

<sup>3</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

<sup>4</sup> *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1000153-O2
<p>The Department's report further advised a submission was being prepared for the Minister to brief him on a number of long-term detention cases, including Mr 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' report stated that Mr X received treatment for complex mental health concerns in relation to his prolonged detention.</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. 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.</li></ol>	

Attachment B

<b>Name</b>	Mr X Ms X (wife) Master X (son)
<b>Ombudsman ID</b>	1002416-O2
<p>Mr X and Ms 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 four 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 sons were born in Australia following their temporary transfer. Their younger son 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 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' 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 Ms X 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 Mr X, Ms X and their sons.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002443-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 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 International Health and Medical Services' report advised that Mr X did not receive treatment for any major mental or physical health concerns during this reporting period.</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. Explore options to address the prolonged detention of Mr X.</li></ol>	

Attachment B

<b>Name</b>	Mr X Ms X (wife) Miss X (daughter) Master X (son) Master X (son)
<b>Ombudsman ID</b>	1002460-O2
<p>Mr X, Ms X and their two children were detained in September 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 children were transferred a Regional Processing Country (RPC) and returned to Australia for medical treatment. Their younger son, Master 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 has 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.</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 children.</li></ol>	



Attachment B

<b>Name</b>	Ms X
<b>Ombudsman ID</b>	1002611-01
<p>Ms X was detained in July 2013 after arriving in Australia by sea with her mother, Ms X and brother, Mr X. She has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than four years. Ms X and Mr X are subject to a separate Ombudsman assessment as a result of their differing number of days in detention.</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) report stated 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 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 report advised that Ms X received treatment for ongoing 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><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>	

Attachment B

<b>Name:</b>	Mr X
<b>Ombudsman ID</b>	1002707-01
<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 three and a half years.</p> <p>Mr X was transferred to a Regional Processing Country (RPC) and returned to Australia to support his wife, Ms X and their son who were returned for medical treatment. Due to differing days in detention Ms X and their son are subject to a separate Ombudsman assessment.</p> <p>The Department of Home Affairs' (the Department) reports advised that because Mr X and his 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 Government of an RPC and has been found to be refugees.</p> <p>The Department's report advised that, while they have children under the age of five 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 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. Explore options to address the prolonged detention of Mr X.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002843-O
<p>Mr X was detained in October 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) 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 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> while he continues to receive treatment for ongoing medical conditions and is unable to work.</p> <p>The International Health and Medical Services (IHMS) report advised that Mr X received treatment for significant and complex physical health concerns.</p> <p>Treating medical practitioners recommended that Mr X be transferred to reside with a family member for care and support. An IHMS Medical Director supported the recommendation for a variation of Mr X's community placement address on compassionate grounds.</p> <p>The Department's report advised that Mr X was found to meet the guidelines for referral under s 197AD for a variation of his community placement address.</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. Refer Mr X's case to the Minister for consideration to vary his community placement address under s 197AD to enable him to reside with a family member for the benefit of his health and welfare.</li><li>2. Explore options to address the prolonged detention of Mr X.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002960-O
<p>Mr X was detained in August 2016 after arriving in Australia as an undocumented air arrival and has remained in an immigration detention facility for more than two and a half years.</p> <p>In June 2017 Mr X's case was found not to meet the guidelines for referral for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.</p> <p>In July 2017 Mr X's Safe Haven Enterprise Visa (SHEV) application was refused and in October 2017 the Administrative Appeals Tribunal (AAT) affirmed the refusal.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court (FCC) and in January 2018 the FCC quashed the AAT's decision and remitted the matter for redetermination according to law.</p> <p>In April 2018 the AAT remitted the matter to the Department of Home Affairs (the Department) for reconsideration with the direction that Mr X was owed protection under the Act.</p> <p>The Department's report stated that in October 2018 a delegate of the Minister refused to grant Mr X a SHEV following reconsideration.</p> <p>In October 2018 Mr X applied for merits review with the AAT of the decision to refuse his SHEV. A hearing was scheduled for April 2019.</p> <p>The Department's report of 26 February 2019 advised that Mr X's case was under consideration for a referral for consideration under s 195A.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for 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><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 195A for the grant of a bridging visa.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002961-O
<p>Mr X was detained in August 2016 after arriving in Australia as an irregular air arrival using a fraudulent passport and has remained in an immigration detention facility for more than two and a half years.</p> <p>In August 2017 Mr X's Safe Haven Enterprise Visa (SHEV) application was refused. In January 2018 the Administrative Appeals Tribunal remitted his case to the Department of Home Affairs (the Department) with the direction that he was owed protection under the <i>Migration Act 1958</i>.</p> <p>The Department's report advised that in April 2018 Mr X was requested to provide a police clearance from Country A for the time he resided there.</p> <p>The Department's report further advised that in October 2018 the Minister declined to intervene under s 195A to grant Mr X a bridging visa in association with his SHEV application.</p> <p>The Department's report advised that in February 2019 Mr X was identified for assessment against the s 195A guidelines for a possible referral to the Minister</p> <p>The Department's report of 26 February 2019 stated that the reconsideration of Mr X's SHEV application was protracted due to the delay in obtaining the police clearance from the Country A High Commission which may take six to eight months.</p> <p>The International Health and Medical Services report stated that Mr X presented with worries associated with his circumstances.</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. Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1003028-O
<p>Mr X was detained in December 2016 following his release from a correctional facility and has remained in an immigration detention facility for more than two years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in December 2016 following criminal charges. In December 2016 Mr X lodged a request for revocation of the cancellation of his visa. In August 2018 the Assistant Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>The Department of Home Affairs' (the Department) 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 (IHMS) report stated that Mr X received treatment for complex mental health concerns. The IHMS report further stated that in February 2018 Mr X advised the IHMS counsellor that he wanted to return to City A as he feels separated from his children and sister.</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, in consultation with Mr X, consider transferring Mr X to Facility Y so he can reside closer to his family and support network.</li></ol>	