

Our ref: 486N-1001758-03

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 10 cases on the schedule ([Attachment A](#)) regarding 12 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 10 cases on the schedule and has made a total of five recommendations in relation to five 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	1001758-O3	N	N	Mr X Master X (brother)	2	1995 2006	2,013 2,013	CD CD	16 January 2019	Awaiting Tabling
2	1002274-O3	1	N	Mr X	1	1986	1,820	CD	25 June 2018 and 21 December 2018	25 June 2018
3	1002359-O4	1	N	Mr X	1	1985	2,011	IDF	8 October 2018 and 12 April 2019	26 November 2018
4	1002505-O2	1	N	Ms X Miss X (daughter)	2	1959 1981	1,644 1,277	CD FDBV	19 March 2018, 18 September 2018 and 21 March 2019	18 June 2018
5	1002632-O2	1	N	Mr X	1	1981	1,460	CD	26 March 2019	7 February 2018
6	1002867-O1	N	N	Mr X	1	1979	1,098	IDF	1 April 2019	21 February 2019
7	1002879-O2	N	N	Mr X	1	1986	1,096	IDF	18 April 2019	Awaiting Tabling
8	1002968-O1	N	N	Mr X	1	1986	915	Removed	6 March 2019	Awaiting Tabling
9	1002997-O	N	N	Mr X	1	1985	730	Removed	9 November 2018	First Assessment
10	1003034-O	1	N	Mr X	1	1994	737	CD	17 January 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Removed and Final Departure Bridging visa (FDBV).

**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	1002274-O3
<p>Mr X was detained in September 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>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 not to be a refugee.</p> <p>The Department's report further advised that, in light of the vulnerabilities associated with his medical condition, 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 requires ongoing treatment for complex mental health concerns in the context of his uncertain future and immigration status.</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
Ombudsman ID	1002359-O4
<p>Mr X was detained in April 2013 after arriving in Australia by sea with his wife, three children and nephew. Mr X has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than five years.</p> <p>Mr X and his family were granted bridging visas in May 2015. Mr X's visa was cancelled under s 116 of the <i>Migration Act 1958</i> in July 2015 following criminal charges.</p> <p>In June 2016 Mr X and his family's Safe Haven Enterprise Visa (SHEV) application was refused and in January 2017 the Immigration Assessment Authority (IAA) affirmed the refusal.</p> <p>Mr X's family lodged an application for judicial review of the IAA's decision in the Federal Circuit Court (FCC). The application excluded Mr X. The FCC remitted the matter for reconsideration and subsequently, Mr X's family were granted SHEV's in August 2018.</p> <p>In August 2017 Mr X signed a request to be voluntarily removed from Australia but withdrew his request in October 2018.</p> <p>The Department of Home Affairs' (the Department) report of 12 April 2019 advised that Mr X had no outstanding matters before the Department, tribunals or courts and was on an involuntary removal pathway. The Department engaged with the High Commission of Country A to obtain a travel document to progress his removal. However, the authorities from Country A refused to issue travel documents as they have been unable to establish Mr X's citizenship he relocated to Country B and resided there for a prolonged period. The matter remained ongoing.</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 complex 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>The Ombudsman notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security 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 while his removal is being progressed. 	

Name	Ms X
Ombudsman ID	1002505-02
<p>Ms X and her daughter, Ms X were detained in July 2013 after arriving in Australia by sea with her husband, Mr X. Mr X is subject to a separate Ombudsman assessment as a result of his differing number of days in detention.</p> <p>In May 2018 Ms X was granted a Final Departure Bridging visa and released from immigration detention.</p> <p>Ms X 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, her daughter and her husband were transferred to a Regional Processing Country (RPC) and returned to Australia for medical treatment.</p> <p>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 husband's treatment. The Department's report advised that Ms X remains in Australia as the primary carer for her husband who has complex physical and mental health issues.</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 husband's 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 physical and 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.	

Attachment B

Name	Mr X
Ombudsman ID	1002632-O2
<p>Mr X was detained in September 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 a RPC on completion of his treatment.</p> <p>The Department's report stated 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' (IHMS) report advised that Mr X received treatment for complex physical health concerns.</p> <p>The Department's report advised that, in light of the vulnerabilities associated with his medical conditions, 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 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
Ombudsman ID	1003034-O
<p>Mr X was detained in October 2013 after arriving in Australia by sea. He has remained in immigration detention, in a facility and the community, for a cumulative period of more than two 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 received treatment for complex physical and mental health concerns.</p> <p>The Department's report advised that, in light of the vulnerabilities associated with his medical conditions, 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 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.	