

486N-000510-02

13 December 2018

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 25 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 seven 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 or s 8 of the *Ombudsman Act 1976*.

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 ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	000510-O2	2	Mr X	1	1961	4,006	IDF	6 December 2017 and 18 June 2018	29 November 2017
2	1000846-O3	1	Mr X	1	1992	2,550	IDF	31 May 2018	25 June 2018
3	1001472-O2	0	Mr X (husband) Ms X (wife) Miss X (sister of Ms X) Master X (son) Miss X (daughter)	5	1982 1988 2004 2009 2013	2,193 2,193 2,193 2,193 1,838	CD CD CD CD CD	9 April 2018 and 15 October 2018	18 June 2018
4	1001513-O3	1	Mr X (husband) Ms X (wife)	2	1969 1963	1,822 1,822	CD CD	4 June 2018	25 June 2018
5	1001534-O2	0	Mr X	1	1980	1,822	IDF	8 June 2018	9 May 2018
6	1002672-O1	0	Mr X	1	1981	1,458	IDF	25 May 2018	18 June 2018
7	1002714-O1	0	Mr X	1	1959	1,096	IDF	16 July 2018	9 May 2018
8	1002803-O1	0	Mr X	1	1989	912	IDF	22 May 2018	25 June 2018
9	1002810-O1	2	Mr X	1	1974	912	IDF	12 June 2018	25 June 2018
10	1002889-O	0	Mr X	1	1972	912	IDF	30 April 2018 and 24 October 2018	First Assessment
11	1002904-O	1	Mr X	1	1982	730	IDF	16 May 2018	First Assessment
12	1002909-O	0	Mr X	1	1992	730	BV	20 May 2018	First Assessment
13	1002912-O	0	Mr X	1	1995	733	IDF	29 May 2018	First Assessment
14	1002916-O	0	Ms X	1	1971	730	CF	31 May 2018	First Assessment
15	1002921-O	0	Mr X	1	1961	730	Removed	9 June 2018	First Assessment
16	1002923-O	0	Mr X	1	1984	731	IDF	11 June 2018	First Assessment
17	1002931-O	0	Mr X	1	1986	732	IDF	21 June 2018	First Assessment
18	1002933-O	0	Mr X	1	1965	730	IDF	25 May 2018	First Assessment
19	2000009-O1	0	Mr X	1	1980	1,096	Removed	4 June 2018	9 May 2018
20	2000017-O1	0	Mr X	1	1983	1,094	IDF	8 June 2018	21 March 2018

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Bridging visa (BV), Removed, Correctional Facility (CF).

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO
THE MINISTER FOR HOME AFFAIRS**
Under s 486O of the Migration Act 1958

Name	Mr X
Ombudsman ID	000510-02
<p>Mr X has been held in an immigration detention facility for a period of more than 11 years.</p> <p>The Ombudsman notes that Mr X has not been considered against the guidelines under ss 195A and 197AB of the <i>Migration Act 1958</i> for a bridging visa or community placement since November 2013. In the interests of procedural fairness, the Ombudsman is of the view that all detainees should be assessed against the guidelines on a regular basis.</p> <p>In October 2015 Mr X's case was identified for assessment against the s 195A guidelines, however in April 2016 the assessment was placed on hold pending health advice. In June 2017 the Department of Home Affairs (the Department) advised that the assessment remained on hold pending an investigation following the Federal Court (FC) judgment of 3 May 2017.³</p> <p>The Ombudsman's previous assessment recommended that the investigation of Mr X's case be expedited in order to resume consideration of his case under ss 501 and 195A.</p> <p>On 29 November 2017 the Minister advised that Mr X's case was being reviewed in light of recently received information and may be referred for consideration under s 501. The Minister further advised that consideration of Mr X's case under s 195A was not considered appropriate at that time.</p> <p>The Department advised in October 2018 that its investigation of Mr X's case concerning the impact of the FC judgment had been finalised. Mr X's protection obligations assessment has resumed and consideration of his case under s 501 has ceased.</p> <p>The Ombudsman notes that Mr X has a significant criminal record and has allegedly been involved in multiple incidents of abusive, aggressive and threatening behaviour toward detention facility staff and other detainees during this assessment period. He also has a serious criminal record.</p> <p>As part of the Office's inspection function of immigration detention facilities, we are aware that the Department has explored multiple different options to manage Mr X's welfare and behaviour in immigration detention and he is currently engaged in an incentivised program.</p> <p>International Health and Medical Services advised that Mr X continues to receive treatment for complex mental health concerns.</p> <p>Treating psychiatrists reported that Mr X's mental health has deteriorated due to the length of time he has remained in immigration detention, the uncertainty of his future and his lack of emotional support. It was recommended that Mr X be placed in an environment that could offer him appropriate medical treatment and access to activities that he enjoys.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X's case be reassessed against the guidelines under ss 195A and 197AB, noting his significant criminal history.2. The Department continue to explore all appropriate options with a view to preparing Mr X for transfer to a lower-security placement, providing him with the necessary support to mitigate the impact of long-term institutionalisation.	

³ *DMH16 v Minister for Immigration* [2017] FCA 448.

Attachment B

Name	Mr X
Ombudsman ID	1000846-O3
<p>Mr X was detained in June 2011 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for more than seven years.</p> <p>In October 2012 an Independent Protection Assessment found that Mr X was not owed protection. In May 2014 Mr X applied to the Federal Circuit Court (FCC) for judicial review of the negative assessment.</p> <p>In February 2016 the FCC determined that the assessment was affected by legal error and the matter was remitted to the Department of Home Affairs (the Department) for re-assessment of Mr X's protection claims.</p> <p>In May 2018 the Minister lifted the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X to lodge a temporary visa application to have his protection claims reassessed. At the time of the Department's report, dated 31 May 2018, Mr X was yet to lodge an application.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for multiple complex mental health concerns. IHMS reported that Mr X was monitored after an incident of self-harm in the context of stressors relating to his court matters and separation from his children. A treating psychiatrist reported that Mr X remains vulnerable and IHMS advised that previous recommendations for Mr X to be placed in close proximity to his children remain desirable.</p> <p>The Ombudsman notes that since the revocation of his community placement in August 2016, the Department has not reported that Mr X has been considered against the guidelines under s 197AB.</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>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X's case be assessed against the s 197AB guidelines for consideration for a community placement in close proximity to his children, given the significant length of time he has remained in detention and the adverse impact of Mr X's separation from his children on his mental health.	

Attachment B

Name	Mr X (husband) Ms X (wife)
Ombudsman ID	1001513-03
<p>Mr X and Ms X were detained in June 2013 after arriving in Australia by sea and have remained in immigration detention, both in a detention facility and the community, for more than five years.</p> <p>Mr X and Ms X's Safe Haven Enterprise visa application was refused in November 2017 and the Immigration Assessment Authority affirmed the refusal in December 2017. Mr X and Ms X lodged an application for judicial review with the Federal Circuit Court in December 2017 and a hearing is scheduled for August 2020.</p> <p>In May 2018 the Minister declined to consider intervening under s 195A of the <i>Migration Act 1958</i> to grant Mr X and Ms X a Final Departure Bridging visa.</p> <p>International Health and Medical Services advised that Mr X and Ms X received treatment for physical health conditions that appear to be well managed.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X and Ms X's case be considered under s 195A for the grant of a bridging visa, given the significant length of time they have remained in detention and the absence of any clear vulnerabilities that require management in a community placement.	

Attachment B

Name	Mr X
Ombudsman ID	1002810-O1
<p>Mr X's Global Special Humanitarian visa was mandatorily cancelled under s 501 of the <i>Migration Act 1958</i> in November 2010.</p> <p>Mr X was detained in December 2015 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>In December 2015 Mr X requested revocation of his visa cancellation decision and in January 2017 the Assistant Minister decided not to revoke the decision to cancel his visa.</p> <p>In June 2017 the Federal Court quashed the Assistant Minister's decision and Mr X's request for revocation was remitted to the Minister for reconsideration. At the time of the Department of Home Affairs (the Department) latest report, dated 12 June 2018, reconsideration of Mr X's request for revocation remained ongoing.</p> <p>International Health and Medical Services (IHMS) advised that Mr X previously disclosed a history of mental health concerns and was referred for specialist counselling. IHMS reported that moving Mr X to a centre in City A closer to his family would be beneficial for his mental wellbeing. IHMS further reported that a recommendation for transfer was supported by the 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>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Department consider transferring Mr X to Facility Y to enable him to reside closer to his family and support network.2. The Minister expedite the reconsideration of Mr X's request for revocation of the decision to cancel his Global Special Humanitarian visa, given the significant length of time since the matter was remitted by the FC.	

Attachment B

Name	Mr X
Ombudsman ID	1002904-O
<p>Mr X has been found not to be owed protection under the <i>Migration Act 1958</i> and has remained in an immigration detention facility for more than two years.</p> <p>In May 2014 Mr X lodged an application for a Protection visa which was refused in April 2016.</p> <p>In May 2017 a Magistrates Court suspended Mr X's pending criminal charges with a date to be fixed in the event he is released from immigration detention into the community.</p> <p>Mr X has no ongoing matters before the Department of Home Affairs (the Department), tribunals or the courts and is on an involuntary removal pathway.</p> <p>The Department has advised that Mr X is a national of Country A without a valid travel document and the authorities of Country A are currently refusing to issue travel documents for involuntary removals.</p> <p>At the time of the Department's report, dated 16 May 2018, the Department continued to liaise with the authorities of Country A to obtain a travel document.</p> <p>International Health and Medical Services advised that Mr X has been diagnosed with complex mental health concerns. He has declined to receive treatment.</p> <p>In March 2018 a psychiatrist advised that Mr X has a serious, chronic and untreated mental illness but is functioning adequately in an immigration detention facility due to the structure and routine.</p> <p>The Ombudsman notes that Mr X's removal is likely to be protracted, posing a serious risk to his mental and physical health.</p> <p>However, in light of the nature of Mr X's health concerns and pending criminal charges a recommendation for the grant of a bridging visa or a community placement is not considered appropriate at this time.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Department explore further options with the authorities of Country A or a third country to repatriate Mr X, in light of the determination that he does not engage Australia's protection obligations.	