

Our ref: 486N-1000557-O2

j 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 10 cases on the schedule (Attachment A) regarding 10 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 seven 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*. For the purposes of further assessment, my office conducted interviews with one individual on the schedule, Mr X (1003053-O).

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	1000557-O2	2	N	Mr X	1	1984	2,191	IDF	27 September 2018 and 29 March 2019	25 June 2018
2	1002304-O3	1	N	Mr X	1	1991	1,832	CD	6 August 2018 and 7 February 2019	15 October 2018
3	1002477-O1	1	N	Ms X	1	1954	1,461	CD	4 March 2018, 3 September 2018 and 12 March 2019	21 March 2018
4	1002727-O1	1	N	Mr X	1	1978	1,277	IDF	30 July 2018 and 28 January 2019	18 June 2018
5	1002766-O	1	N	Mr X	1	1994	1,281	APOD	5 September 2017, 16 March 2018, 22 September 2018 and 20 March 2019	First Assessment
6	1002845-O1	N	N	Mr X	1	1974	1,090	IDF	19 February 2019	Awaiting Tabling
7	1003048-O	1	N	Mr X	1	1980	730	IDF	2 February 2019	First Assessment
8	1003053-O	N	N	Mr X	1	1994	730	IDF	10 February 2019	First Assessment
9	1003068-O	N	N	Mr X	1	1994	736	Removed	12 March 2019	First Assessment
10	1003087-O	N	N	Mr X	1	1997	730	IDF	12 April 2019	First Assessment

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

<sup>2</sup> Immigration Detention Facility (IDF), Alternative Place of Detention (APOD), Community Placement (CD) and Removed.

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO  
THE MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS**  
*Under s 486O of the Migration Act 1958*

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1000557-02
<p>Mr X was detained in July 2010 after arriving in Australia by sea and has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than six years.</p> <p>Mr X was found not to be owed protection under the Refugee Convention through non-statutory processes in 2010 and 2011.</p> <p>In September 2012 Mr X was granted a bridging visa and was released from immigration detention. Following the expiration of his visa in October 2013, Mr X remained in the community unlawfully until May 2015 when he was charged by police with a criminal offence. This charge was later withdrawn.</p> <p>The Department of Home Affairs' (the Department) report of 27 March 2016 advised that Mr X had no outstanding matters before the Department, tribunals or the courts and was on an involuntary removal pathway. However, as he did not hold a valid travel document his removal could not be pursued.</p> <p>In February 2017 Mr X's case was referred to the Minister for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. In May 2017 the Minister declined to intervene. In September 2017 Mr X's case was found not to meet the guidelines for a further referral.</p> <p>In February 2019 Mr X lodged an application for judicial review of the non-statutory processes from 2010 and 2011 in the Federal Circuit Court. The matter was scheduled for hearing in April 2019.</p> <p>The Department's report of 29 March 2019 advised that Mr X's case was included on a group submission that was referred to the former Assistant Minister in February 2019 to brief her on a number of long term detention cases. The submission provided the former Assistant Minister an opportunity to indicate whether she was willing to consider the cases on an individual basis.</p> <p>In February 2019 the former Assistant Minister requested further information about Mr X's case in order to make a decision. The Department's report advised that an additional brief will be prepared for Mr X's case to be progressed.</p> <p>The Department's report advised that Mr X remains on an involuntary removal pathway, however, due to the ongoing judicial review process, his removal will not be progressed at this time. The Department's report further advised that Mr X does not have a valid travel document and is unwilling to return to Country A voluntarily. The authorities of Country A are currently not cooperating with the involuntary return of Country A citizens and as a result Mr X's removal is likely to be protracted.</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 raises the concern that Mr X is likely to remain in immigration detention for a prolonged period due to the protracted nature of his removal from Australia. This poses a significant risk to his health and welfare.</p>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1000557-02
<b>Recommendation</b>	
The Ombudsman recommends that:	
<ol style="list-style-type: none"><li>1. The Department expedite the preparation of the additional brief for Mr X's case to be progressed to the Minister for consideration under his personal intervention powers for the grant of a bridging visa under s 195A.</li><li>2. If it is not deemed appropriate to grant Mr X a bridging visa, the Department refer Mr X's case to the Minister for consideration under s 197AB for the grant of a community placement.</li></ol>	

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO  
THE MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS**  
*Under s 486O of the Migration Act 1958*

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002304-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. The Department of Home Affairs' (the Department) report stated 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 stated the Department is supporting the Government of an RPC to finalise the Refugee Status Determination of Mr X while he remains temporarily in Australia for medical treatment.</p> <p>The International Health and Medical Services report advised that Mr X received treatment for complex 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><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>	Ms X
<b>Ombudsman ID</b>	1002477-O1
<p>Ms X was detained in December 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 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>The International Health and Medical Services report advised that Ms X was monitored for physical and mental health concerns.</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 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>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002727-O1
<p>Mr X was detained in July 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than three and a half years.</p> <p>Mr X's visa was mandatorily cancelled under s 501 of the <i>Migration Act 1958</i> in July 2015 following criminal charges. In May 2018 Mr X's request for revocation of the cancellation of his visa was referred to the Minister for consideration and in August 2018 the Minister decided not to revoke the decision.</p> <p>Mr X lodged an application for judicial review in the Federal Court and the matter was adjourned in May 2019 to await the outcome of a related case.</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 report stated that Mr X received treatment for complex mental health concerns.</p> <p>In July 2018 Mr X reported to a psychiatrist that he was unhappy and wished to be moved to City A. In September 2018 Mr X reported exacerbation of symptoms arising from stresses related to his long term detention and family separation.</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 consider transferring Mr X to Facility Y so he can reside closer to his family and support network.</li></ol>	

<b>Name</b>	Ms X
<b>Ombudsman ID</b>	1002766-O
<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 a designated care facility, for a cumulative period of more than three 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 stated that as Ms X arrived after 19 July 2013 she remains liable for transfer back to an RPC on completion of her medical 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 International Health and Medical Services (IHMS) report stated that Ms X received treatment for complex physical and mental health concerns. IHMS advised that Ms X requires a high level of personal and medical care and requires ongoing placement in an environment that can cater to her daily physical and mental health needs. Her stress and frustrations in relation to her situation have impacted on her mental health.</p> <p>A treating psychiatrist recommended a reduction in her level of supervision and advised that providing access to social visits and outings would be beneficial to her mental health.</p> <p>The Department's report further advised that, in light of the vulnerabilities associated with her medical condition, Ms X 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'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>	1003048-O
<p>Mr X was detained in April 2015 following his release from a correctional facility and has remained in an immigration detention facility for a cumulative period of more than two years.</p> <p>Mr X's visa was mandatorily cancelled under s 501 of the <i>Migration Act 1958</i> in March 2015 following criminal charges. In March 2015 Mr X lodged a request for revocation of the cancellation of his visa. In April 2016 a delegate of the Minister decided to revoke the cancellation decision. Mr X's visa was reinstated and he was released from detention.</p> <p>Mr X's visa was mandatorily cancelled a second time under s 501 in January 2018 following further criminal charges. Mr X was re-detained in February 2018 following his release from a correctional facility.</p> <p>In February 2018 Mr X lodged a request for revocation of the cancellation of his visa which was found to be invalid. In January 2019 following an investigation the Department of Home Affairs (the Department) commenced the revocation consideration process.</p> <p>The Department's report advised that in June 2018 Mr X had made a request to be transferred to City A to be closer to his family.</p> <p>The Department's report further 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 mental and physical 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. The Department consider transferring Mr X to Facility Z so he can reside closer to his family and support network.</li></ol>	