

Our ref: 486N-1000516-O3

 January 2019

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 21 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 six 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 Mr X (1001285-O2), Mr X (1002845-O), Mr X (1002862-O) and Mr X (1002891-O).

I note Mr X's (1002426-O1) removal is likely to be protracted because involuntary removal to Country A is not currently possible. I also note his protracted removal and continued placement in immigration detention poses a risk to his physical and mental health.

Mr X's (1002387-O3) visa was cancelled under s 501 of the Act. I note that, at the time of its latest report dated 30 October 2018, the Department of Home Affairs was progressing an International Treaties Obligations Assessment which commenced in October 2017, to determine if Mr X's case continues to engage Australia's *non-refoulement* obligations. Given the nature of Mr X's criminal offences, I do not consider it is appropriate to make a recommendation about the grant of a bridging visa or a community placement at this time. However, I note the serious risk posed to his physical and mental health as a result of his prolonged placement in immigration detention.

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. 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 <sup>1</sup>	Detention status <sup>2</sup>	Date of 486N report	Date last assessment tabled
1	1000516-O3	0	Mr X	1	1974	2,921	FDBV	21 June 2018	25 June 2018
2	1001026-O1	0	Mr X	1	1987	2,196	Removed	28 June 2018	9 May 2018
3	1001232-O3	0	Mr X	1	1988	2,008	IDF	31 July 2018	18 June 2018
4	1001257-O1	1	Mr X	1	1987	2,008	IDF	24 February 2018 and 29 August 2018	7 February 2018
5	1001285-O2	1	Mr X	1	1974	2,008	IDF	19 March 2018 and 21 September 2018	18 June 2018
6	1001676-O3	0	Mr X	1	2004	2,014	CD	27 April 2018 and 5 November 2018	18 June 2018
7	1001758-O2	0	Mr X Master X	2	1995 2006	1,825 1,825	CD CD	13 July 2018	9 May 2018
8	1001857-O2	1	Mr X	1	1985	2,010	IDF	9 April 2018 and 15 October 2018	21 March 2018
9	1001913-O2	0	Mr X	1	1985	1,822	FDBV	2 July 2018	9 May 2018
10	1002387-O3	0	Mr X	1	1984	1,643	IDF	4 May 2018 and 30 October 2018	9 May 2018
11	1002247-O3	0	Mr X	1	1987	1,834	IDF	31 May 2018 and 11 December 2018	18 June 2018
12	1002426-O1	0	Mr X	1	1982	913	IDF	16 July 2018	10 May 2017
13	1002488-O1	0	Mr X	1	1979	913	Removed	16 July 2018	10 May 2017
14	1002647-O1	0	Mr X	1	1967	1,277	IDF	23 April 2018 and 22 October 2018	9 May 2018
15	1002845-O	1	Mr X	1	1974	914	IDF	24 February 2018 and 27 August 2018	First Assessment
16	1002862-O	1	Mr X	1	1981	912	IDF	16 March 2018 and 14 September 2018	First Assessment
17	1002888-O	0	Mr X	1	1990	912	IDF	26 April 2018 and 24 October 2018	First Assessment
18	1002891-O	1	Mr X	1	1979	912	IDF	26 April 2018 and 25 October 2018	First Assessment
19	1002938-O	0	Mr X	1	1987	731	IDF	9 July 2018	First Assessment
20	1002949-O	0	Mr X	1	1995	730	IDF	26 July 2018	First Assessment

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

<sup>2</sup> Immigration Detention Facility (IDF), Community Placement (CD), Removed, Final Departure Bridging visa (FDBV).

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

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1001257-O1
<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 five and a half years.</p> <p>The Department of Home Affairs (the Department) advised that Mr X's removal remains protracted due to delays in obtaining a travel document from the authorities of Country A. The Department further advised it was considering referring Mr X's case to the Minister for the grant of a bridging visa under s 195A.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to receive specialist treatment for mental health concerns in the context of his prolonged detention. IHMS reported that Mr X was likely to be adversely affected by his placement in an immigration detention facility and reiterated a psychiatrist's recommendation that Mr X be placed in the community to prevent further deterioration in his mental health.</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. In light of the obstacles to Mr X's removal from Australia and the adverse impact of his prolonged immigration detention on his health and welfare, the Minister consider Mr X's case under s 195A for the grant of a Final Departure Bridging visa or Removal Pending Bridging visa.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1001285-02
<p>Mr X was detained in March 2013 after arriving in Australia as an irregular air arrival and has remained in an immigration detention facility for more than five and a half years.</p> <p>Mr X lodged a Temporary Protection visa application in September 2017 that was refused in November 2017. Mr X applied for judicial and merits review. The Administrative Appeals Tribunal determined that it did not have jurisdiction to review the matter and in July 2018 the Federal Circuit Court dismissed Mr X's application for judicial review.</p> <p>In August 2018 Mr X lodged an application for judicial review in the Federal Court (FC) and upon being notified his involuntary removal was being progressed, he sought an interim injunction against the Minister to prevent his removal. In September 2018 an injunction was granted and the FC granted Mr X leave to appeal. The matter was referred to the Full Federal Court.</p> <p>The Department of Home Affairs (the Department) has advised the injunction is a barrier to Mr X being removed from Australia.</p> <p>In November 2018 the Department advised it was preparing a submission for the Minister, briefing him on a number of long-term detention cases including Mr X's. This will give the Minister an opportunity to indicate whether he is willing to consider those cases on an individual basis.</p> <p>International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple physical health concerns and attended specialist counselling for mental health concerns.</p> <p>A specialist counsellor advised that Mr X has symptoms which are being exacerbated by the detention centre environment. The counsellor noted that Mr X would benefit from living in the community environment.</p> <p>In a June 2018 mental health review with IHMS, it noted Mr X was distressed about being separated from family supports.</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. In light of medical advice and the absence of any recent behavioural or security concerns, the Minister consider Mr X's case under s 195A of the <i>Migration Act 1958</i> and grant him a bridging visa.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1001857-O2
<p>Mr X was detained in April 2013 after arriving in Australia by sea and has remained in immigration detention for more than five and a half years.</p> <p>The Ombudsman's previous assessment recommended the Department of Home Affairs (the Department) expedite its consideration of Mr X's case under s 195A of the <i>Migration Act 1958</i>. It also recommended that, if Mr X was not granted a bridging visa, the Department should consider transferring him to Facility Z to be closer to his family.</p> <p>On 21 March 2018 the Minister advised that Mr X had not met the s 195A guidelines for referral for a bridging visa and that his detention placement remained appropriate given his risk rating within the detention network.</p> <p>In October 2016 Mr X's son lodged a Temporary Protection visa (TPV) application that included Mr X. The TPV application was refused in January 2017 and in July 2018 the Administrative Appeals Tribunal affirmed the decision. The family lodged an application for judicial review at the Federal Circuit Court and a hearing is scheduled for March 2019.</p> <p>At the time of its latest report dated 15 October 2018, the Department advised it was preparing a ministerial submission under s 195A regarding granting a bridging visa to Mr X.</p> <p>International Health and Medical Services reported that Mr X was being adversely affected by his detention placement and ongoing separation from his family.</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. Given the significant length of time he has remained in detention and the adverse impact of family separation on his mental health, Mr X's case be referred to the Minister under s 195A so he may consider granting a bridging visa.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002845-O
<p>Mr X was detained in November 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>Mr X lodged a Temporary Protection visa application in August 2016 that was refused in March 2017. The Immigration Assessment Authority affirmed the decision in May 2017. Mr X lodged an application for judicial review in the Federal Circuit Court and the matter was discontinued in September 2018.</p> <p>In December 2017 Mr X was issued with a non-prejudicial security assessment.</p> <p>In August 2018 Mr X was identified for assessment against the guidelines under s 197AB of the <i>Migration Act 1958</i> for a possible referral to the Minister so he may consider granting Mr X a community placement.</p> <p>International Health and Medical Services advised that Mr X received treatment for complex mental health concerns. In August 2017 and March 2018 Mr X was assessed as being at risk of deterioration.</p> <p>In September 2018 Mr X advised that he had a sister residing in City A and had requested to be transferred to City A on multiple occasions.</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. If Mr X is not granted a community placement, the Department of Home Affairs transfer Mr X to Facility Y so he can reside closer to his family.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002862-O
<p>Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in an immigration detention facility for more than two and a half years.</p> <p>In March 2018 the Federal Circuit Court (FCC) dismissed Mr X's applications for judicial review of the cancellation of his visa under s 116 of the <i>Migration Act 1958</i>, the refusal of his bridging visa application and the refusal of his Protection visa application.</p> <p>In April 2018 Mr X applied to the Federal Court for judicial review of the FCC's decision and the matter was adjourned to a date to be fixed following the finalisation of two High Court matters.</p> <p>The Ombudsman notes the Department of Home Affairs' (the Department) advice that Mr X has been placed in an immigration detention facility based on an assessment of his risk to the community. At the time of the Department's latest report Mr X was placed at Facility Y.</p> <p>International Health and Medical Services (IHMS) advised that Mr X had suffered episodes of anxiety in December 2016 related to his transfer between immigration detention facilities. IHMS further advised that Mr X was receiving treatment for mental health concerns. During a routine screening in June 2018 no acute mental health risks were identified.</p> <p>During an interview with Ombudsman staff in December 2018, Mr X advised that his separation from his wife and children in City A was very difficult and was adversely affecting him. He stated that he had requested to be transferred to a facility closer to his family on several occasions.</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 a facility in City A so he can reside closer to his family.</li></ol>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002891-O
<p>Mr X was initially detained in July 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>In November 2012 Mr X was granted a bridging visa. His visa was cancelled under s 116 of the <i>Migration Act 1958</i> in July 2014 following criminal charges.</p> <p>Mr X lodged a Protection visa application in December 2012 that was refused in February 2014. The Administrative Appeals Tribunal affirmed the refusal in January 2016.</p> <p>In August 2016 the Commonwealth Director of Public Prosecutions decided not to pursue further criminal proceedings in Mr X's case and the matter was considered closed. On the same day Mr X was released from criminal custody and was re-detained under s 189.</p> <p>The Department of Home Affairs (the Department) advised that at the time of its latest report, dated 25 October 2018, Mr X had no outstanding matters before the Department, tribunals or courts and was on an involuntary removal pathway.</p> <p>The Department advised Mr X does not have a valid travel document and is unwilling to return to Country A voluntarily. As a result his removal is likely to be protracted.</p> <p>International Health and Medical Services advised that Mr X disclosed a history of torture and trauma and received treatment for situational anxiety and nightmares.</p> <p>Mr X has advised he has family in City A and friends in Australia who are unable to visit him in City B.</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 a facility in City A so he can reside closer to his family and support network.</li></ol>	