

486N-000479-O1

26 September 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 at Attachment A regarding 20 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 for 17 of them has made no recommendations. My office has made four recommendations for three cases which are at Attachment B.

The Act also requires that I prepare this de-identified statement for tabling in the 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*. For the purposes of further assessment, my office conducted an interview with Mr X (1002794-O).

I note that although a recommendation is not considered appropriate while Mr X (1002792-O) awaits the outcome of judicial review, Mr X's circumstances raise particular concerns. In his decision not to revoke the cancellation of Mr X's visa, the former Assistant Minister advised that Mr X is stateless, with no known prospect of removal to another country. In refusing to revoke the cancellation decision, the former Assistant Minister noted that Mr X faces the prospect of indefinite immigration detention and that indefinite detention is likely to have an ongoing adverse effect on Mr X.

Yours sincerely



Jaala Hinchcliffe
A/g 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	000479-O1	1	Ms X	1	1981	1,458	IDF	28 February 2018	10 May 2017
2	1000819-O2	0	Mr X	1	1962	2,550	Removed	30 March 2018	9 May 2018
3	1000872-O	0	Mr X	1	1983	1,095	IDF	10 January 2018 and 12 July 2018	12 February 2014
4	1001237-O2	0	Mr X	1	1971	1,822	IDF	25 January 2018	21 March 2018
5	1001970-O2	0	Mr X	1	1988	1,640	IDF	8 February 2018	29 November 2017
6	1002574-O1	0	Mr X	1	1980	1,278	IDF	15 January 2018 and 16 July 2018	7 February 2018
7	1002576-O1	0	Mr X	1	1992	1,277	IDF	17 January 2018 and 17 July 2018	7 February 2018
8	1002582-O1	0	Mr X	1	1980	1,096	Removed	22 January 2018	21 March 2018
9	1002595-O1	0	Mr X	1	1981	1,094	IDF	9 February 2018	6 December 2017
10	1002691-O1	0	Mr X	1	1988	1094	IDF	15 February 2018	21 March 2018
11	1002763-O1	0	Mr X	1	1956	912	Removed	14 March 2018	18 June 2018
12	1002792-O	0	Mr X	1	1973	912	IDF	24 October 2017 and 25 April 2018	First Assessment
13	1002794-O	1	Mr X	1	1985	912	IDF	31 October 2017 and 3 May 2018	First Assessment
14	1002798-O	0	Mr X	1	1969	730	IDF	9 November 2017	First Assessment
15	1002822-O	0	Mr X	1	1964	732	Removed	28 December 2017	First Assessment
16	1002825-O	2	Mr X	1	1957	912	IDF	4 January 2018 and 5 July 2018	First Assessment
17	1002831-O	0	Mr X	1	1988	912	IDF	23 January 2018 and 24 July 2018	First Assessment
18	1002833-O	0	Mr X	1	1975	730	IDF	31 January 2018	First Assessment
19	1002848-O	0	Mr X	1	1993	732	IDF	26 February 2018	First Assessment
20	1002853-O	0	Mr X	1	1978	730	Removed	6 March 2018	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Removed.

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

Name	Ms X
Ombudsman ID	000479-O1
<p>Ms X was initially detained in September 2006 following her release from a correctional facility. She was subsequently released on a visa in August 2009. She was re-detained in February 2016 upon cancellation of her visa and was released on a second occasion in October 2016 following the revocation of the cancellation decision.</p> <p>Ms X was re-detained in September 2017 upon further cancellation of her visa under s 501BA. Ms X has been in an immigration detention facility for a cumulative period of more than four years.</p> <p>Ms X was located at Facility Y at the time of the Department's latest report, however her family, including her daughter are located in State A.</p> <p>Ms X approached the Office of the Commonwealth Ombudsman (the Office) to raise complaints regarding separation from her family. International Health and Medical Services (IHMS) noted that Ms X reported stress and worry about the ongoing impact on her family.</p> <p>Ms X also raised concerns with the Office regarding accessing legal assistance for a hearing with the Federal Court scheduled for November 2018 in State A.</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. Consideration be given to transferring Ms X to Facility Z in State A to enable her to reside closer to her family support network, in particular her daughter, and to pursue options for legal assistance.	

Attachment B

Name	Mr X
Ombudsman ID	1002794-O
<p>Mr X was detained in July 2013 after arriving in Australia by sea and was granted a bridging visa in August 2013. He was re-detained in November 2015 following the cancellation of his bridging visa and has remained in an immigration detention facility for a cumulative period of more than two and a half years.</p> <p>IHMS advised that Mr X was prescribed with medication and attended counselling for multiple mental health concerns. Treating psychiatrists reported that Mr X's mental health was being adversely affected by his detention and the uncertainty surrounding his future. A specialist counsellor advised in August 2017 that Mr X's mental state was at risk of further deterioration while he remains in a detention facility and recommended that he be placed in the community.</p> <p>The Ombudsman notes the Department's advice that following remittal from the Administrative Appeals Tribunal, Mr X's Safe Haven Enterprise visa (SHEV) application was being reconsidered under s 501 on character grounds.</p> <p>During an interview with Ombudsman staff, Mr X advised that he was receiving treatment for mental health issues related to situational stress and worry for his family in Country A. He stated that he had lodged a request with Serco to be placed in a single room as he was experiencing insomnia that was being exacerbated by disturbances related to sharing a room. Mr X advised that he would benefit from being placed at a facility closer to his support network.</p> <p>The Ombudsman notes that since the Department's latest report, Mr X has been transferred to Facility Y.</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, in consultation with IHMS, whether it is appropriate to place Mr X in a single room to effectively support his mental health.	

Attachment B

Name	Mr X
Ombudsman ID	1002825-O
<p>Mr X was detained in January 2016 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>At the time of its latest report, the Department advised that Mr X had been found to meet the guidelines under s 195A for the grant of a bridging visa that would allow Mr X to be placed in an alternative type of accommodation suitable for his medical conditions.</p> <p>IHMS advised that Mr X received specialist treatment for complex medical conditions.</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. The government's duty of care is particularly significant in cases of increased vulnerability such as that of Mr X's due to his complex medical conditions.</p> <p>Treating specialists advised that Mr X required significant assistance and would be unable to manage independently in the community. It was further advised that a possible return to Country A would not be suitable for Mr X due to his medical condition and lack of support networks.</p> <p>The IHMS Area Medical Director supported a recommendation that Mr X be transferred to an accommodation address where he could be cared for in a therapeutic and structured environment, as his condition was chronic and progressive.</p> <p>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X be placed in an alternative type of accommodation that provides him with the appropriate level of support and assistance, in light of the vulnerabilities associated with his medical conditions.2. If Mr X is granted a bridging visa, the Department ensure that the associated conditions of the visa allow Mr X to be provided with the necessary support to effectively manage his complex medical conditions.	