

486N-1001666-O2

*j/6* August 2018

The Hon Peter Dutton MP  
Minister for Home 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 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 16 of them has made no recommendations. My office has made six recommendations for four 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 my assessment my office has 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 an interview with one individual on the schedule.

I note that removal is likely to be protracted for Mr X (1000880-O2) as involuntary removal is not possible at present.

I note that the Department of Home Affairs (the department) identified that Mr X (1001929-O1) and Mr X (1002744-O) have ongoing security or character concerns, and their prolonged immigration detention poses a risk to their physical and mental health.

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	1001666-O2	0	Mr X	1	1974	1,822	IDF	29 December 2017	7 February 2018
2	1000880-O2	2	Mr X	1	1981	2,188	IDF	3 February 2018	21 March 2018
3	1002781-O	1	Mr X	1	1989	912	IDF	13 October 2017 and 13 April 2018	First Assessment
4	1002162-O2	0	Mr X	1	1995	1,640	APOD	12 September 2017 and 13 March 2018	29 November 2017
5	1001929-O1	0	Mr X	1	1985	1,642	IDF	22 January 2018	7 February 2018
6	1002834-O	0	Mr X	1	1980	730	IDF	2 February 2018	First Assessment
7	1000437-O2	0	Mr X	1	1967	2,732	BV	6 November 2017	14 September 2017
8	1002534-O1	1	Mr X	1	1967	1,278	IDF	21 October 2017 and 23 April 2018	14 September 2017
9	1000441-O1	0	Mr X (husband) Ms X (wife) Miss X (daughter) Miss X (daughter)	4	1974 1982 2008 2015	1,734 2,734 2,734 919	CD CD CD CD	8 November 2017	14 September 2017
10	1002883-O	0	Mr X	1	1994	730	BV	19 April 2018	First Assessment
11	1002863-O	0	Mr X	1	1996	733	BV	19 March 2018	First Assessment
12	1001775-O2	0	Mr X	1	1986	1,825	IDF	8 January 2018 and 11 July 2018	7 February 2018
13	1002839-O	0	Mr X	1	1987	730	IDF	9 February 2018	First Assessment
14	1001332-O2	0	Mr X	1	1997	2,004	CD	1 November 2017 and 2 May 2018	7 February 2018
15	1002100-O1	0	Mr X	1	1989	2,004	CD	30 October 2017 and 30 April 2018	18 October 2017
16	1002569-O1	0	Mr X	1	1984	1,096	IDF	8 January 2018	7 February 2018
17	1000894-O1	2	Ms X	1	1960	2,183	IDF	22 December 2017	29 November 2017
18	1000791-O	0	Ms X	1	1989	1,276	APOD	1 February 2018	18 March 2015

<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), Bridging visa (BV).

Attachment A

No	Ombudsman ID	Recommendations	Name	No. of People	Year of birth	Days in detention	Detention Status	Date of 486N report	Date last assessment tabled
19	1001966-O2	0	Ms X (mother) Miss X (daughter)	2	1986 2011	1,640 1,640	CD CD	6 February 2018	7 February 2018
20	1002744-O	0	Mr X	1	1976	912	IDF	23 August 2017 and 21 February 2018	First Assessment

**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>	1000880-O2
<p>Mr X was detained in August 2011 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for more than six and a half years.</p> <p>International Health and Medical Services (IHMS) advised that Mr X has a history of complex mental health concerns and was hospitalised in July 2017.</p> <p>In response to an Ombudsman investigation IHMS further advised in February 2018 that it considered a community placement with appropriate intensive support would be the most therapeutic placement for Mr X's mental health. IHMS proposed a Tier 4 placement such as an Alternative Place of Detention (APOD) with 24 hour mental health care assistance as an alternative if a community placement was not viable.</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. Mr X be placed in the community with appropriate health and welfare supports, in light of his mental health concerns, IHMS's advice, the significant length of time he has remained in detention and the likelihood that his removal will be protracted.</li><li>2. If it is not appropriate for Mr X to be placed in the community, he be considered for a Tier 4 placement appropriately catered to accommodate his mental health needs.</li></ol>	



<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002781-O
<p>Mr X was detained in October 2015 after arriving in Australia by sea and has remained in an immigration detention facility for more than two and a half years.</p> <p>The department advised that due to his method of arrival Mr X is subject to transfer to a Regional Processing Centre (RPC) and is barred under s 46A from lodging a valid visa application.</p> <p>Mr X is the plaintiff in a High Court matter in which he is seeking an undertaking from the department to provide notice of any intended removal to an RPC. The department advised that this matter is an impediment to transferring Mr X to an RPC for processing of his protection claims.</p> <p>At the time of the department's latest report, Mr X had been identified for assessment against the guidelines under s 195A for possible referral to the Minister for the grant of a bridging visa.</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>IHMS advised that Mr X received treatment for multiple complex mental health concerns.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"><li>1. Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa, given the length of time he has remained in detention and the absence of any security concerns.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002534-O1
<p>Mr X was detained in October 2014 after arriving in Australia by sea and has remained in an immigration detention facility for more than three and a half years.</p> <p>On 5 March 2018 Mr X was identified for assessment against the guidelines under s 195A for a possible referral to the Minister for the grant of a bridging visa.</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. IHMS advised that Mr X received treatment for multiple mental health concerns.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"><li>1. Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa, given the significant length of time he has remained in detention and the absence of any recent behavioural or security concerns.</li></ol>	

<b>Name</b>	Ms X
<b>Ombudsman ID</b>	1000894-O1
<p>Ms X was detained in November 2011 after arriving in Australia by sea and has remained in an immigration detention facility for more than six years.</p> <p>In August 2017 the Administrative Appeals Tribunal remitted Ms X's Temporary Protection visa (TPV) application to the department for reconsideration with the direction that she is a refugee.</p> <p>At the time of its report the department advised that it was reviewing Ms X's case for possible refusal of her TPV application under s 501 on character grounds.</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>IHMS advised that Ms X received treatment for multiple complex mental health concerns. A psychiatrist reported that Ms X was unlikely to benefit from psychological treatment while she remains in a detention facility environment and IHMS advised that her mental health was being adversely affected by her detention placement.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"><li>1. Ms X be placed in a detention facility that will provide single occupancy accommodation.</li><li>2. Where this cannot be provided, the department consider alternative placement options such as Facility Y.</li></ol>	