

486N-1000023-O2

27 November 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 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 has made a total of two recommendations in relation to two 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*.

Mr X's (1001113-O2) visa was cancelled under s 501 of the Act. Mr X has no ongoing matters before the Department of Home Affairs or the courts and is on an involuntary removal pathway. In light of the nature of his criminal offences a recommendation in relation to the grant of a bridging visa or a community placement is not considered appropriate at this time. However, I note the serious risk posed to his physical and mental health, due to particular obstacles that apply to his removal from Australia which is likely to result in his prolonged immigration detention.

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	1000023-O2	1	Mr X	1	1986	3,106	IDF	2 March 2018 and 10 September 2018	7 February 2018
2	1001113-O2	0	Mr X	1	1948	2,191	IDF	5 March 2018 and 6 September 2018	21 March 2018
3	1001379-O2	0	Mr X	1	1984	1,822	IDF	1 May 2018	21 March 2018
4	1001519-O3	0	Mr X	1	2002	1,822	CD	5 June 2018	25 June 2018
5	1001647-O2	0	Mr X	1	1987	2,004	IDF	10 May 2018	21 March 2018
6	1001981-O2	0	Mr X	1	1986	2,193	IDF	16 April 2018 and 23 October 2018	18 June 2018
7	1002163-O2	1	Mr X	1	1989	1,827	IDF	14 March 2018 and 17 September 2018	21 March 2018
8	1002608-O1	0	Mr X	1	1982	1,462	IDF	19 February 2018 and 23 August 2018	7 February 2018
9	1002726-O1	0	Mr X	1	1968	1,095	IDF	30 July 2018	9 May 2018
10	1002797-O1	0	Mr X	1	1964	914	Removed	11 May 2018	18 June 2018
11	1002813-O1	0	Mr X	1	1992	912	IDF	17 June 2018	25 June 2018
12	1002815-O1	0	Mr X	1	1983	912	IDF	20 June 2018	25 June 2018
13	1002900-O	0	Mr X	1	1985	732	IDF	18 January 2012 and 14 May 2018	First Assessment
14	1002905-O	0	Mr X	1	1997	732	IDF	21 May 2018	First Assessment
15	1002906-O	0	Mr X	1	1992	731	CF	21 May 2018	First Assessment
16	1002907-O	0	Mr X	1	1961	731	CF	21 May 2018	First Assessment
17	1002922-O	0	Mr X	1	1967	732	Removed	12 June 2018	First Assessment
18	1002926-O	0	Mr X	1	1988	730	IDF	12 July 2018	First Assessment
19	1002928-O	0	Mr X	1	1982	730	Removed	15 June 2018	First Assessment
20	1002936-O	0	Mr X	1	1996	732	CF	9 July 2018	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), 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	1000023-O2
<p>Mr X was detained in November 2009 after arriving in Australia by sea and has remained in an immigration detention facility for more than eight and a half years.</p> <p>The Ombudsman's previous assessment recommended that Mr X's case be referred to the Minister under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa, in light of the significant length of time he has remained in detention and his ongoing mental health concerns. The Ombudsman further recommended that should Mr X remain in an immigration detention facility, he be transferred to Facility Z to reside closer to his wife.</p> <p>On 7 February 2018 the Minister advised that he had declined to intervene under s 195A to grant Mr X a bridging visa, and that since there had been no significant change in Mr X's case, further consideration under s 195A was not appropriate at that time. The Minister further advised that a transfer to a facility in City A was not possible at that time due to capacity issues.</p> <p>The Department of Home Affairs (the Department) advised in September 2018 that Mr X was transferred to Facility Z following his request for transfer in March 2018. The Department further advised that it was considering Mr X's case under s 197AB for the grant of a community placement.</p> <p>In May 2018 the Minister lifted the s 46A bar to allow Mr X to lodge a Temporary Protection visa or Safe Haven Enterprise visa to be assessed through the fast track process. Mr X was yet to lodge an application at the time of the Department's latest report.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for multiple mental health concerns.</p> <p>During a psychiatric review in February 2018 Mr X presented with chronic stress and worry related to his prolonged detention and the impact on his relationship with his wife.</p> <p>In July 2018 IHMS reported that Mr X's condition was likely to be adversely affected by his placement at an immigration detention facility and reiterated the previous recommendation of a psychiatrist that Mr X be placed in the community to reside with his wife for the benefit of 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>Recommendation</p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none">1. Mr X's case be referred to the Minister for consideration under s 197AB for the grant of a community placement, given the significant length of time he has remained in detention and his ongoing mental health concerns.	

Attachment B

Name	Mr X
Ombudsman ID	1002163-02
<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 years.</p> <p>Mr X's Safe Haven Enterprise visa application was refused in September 2016 and the Immigration Assessment Authority affirmed the refusal decision in December 2016.</p> <p>The Federal Circuit Court dismissed Mr X's application for judicial review in November 2017 and Mr X lodged an application with the Federal Court in December 2017. Mr X continues to await the outcome of his matter with the Federal Court.</p> <p>The Department advised that at the date of its latest report it was preparing a ministerial submission under s 195A for Mr X for the grant of a bridging visa.</p> <p>International Health and Medical Services advised that Mr X previously engaged with supportive counselling for the management of multiple mental health concerns.</p> <p>During this assessment period Mr X was noted to be experiencing low mood, sleeping difficulties and worry in the context of his ongoing detention and uncertainty about his future. Mr X was reported to be at low risk of self-harm due to protective factors including his family and religious faith.</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 referred to the Minister for consideration under s 195A for the grant of a bridging visa while he awaits the outcome of judicial review, given the significant length of time he has remained in detention.	