

Our ref: 486N-1001285-O3

22 August 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 of nine cases on the schedule (Attachment A) regarding nine 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 nine cases on the schedule and has made five recommendations in relation to five 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 an interview with one individual on the schedule, Mr X (1003096-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 ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	1001285-O3	N	N	Mr X	1	1974	2,193	IDF	25 March 2019	4 July 2019
2	1001805-O3	1	N	Mr X	1	1981	2,191	IDF	25 February 2019	26 November 2018
3	1001941-O1	1	N	Mr X	1	1990	1,277	IDF	25 March 2019 and 3 May 2019	8 November 2016
4	1001981-O3	1	N	Mr X	1	1986	2,382	IDF	29 April 2019	21 February 2019
5	1002480-O3	1	N	Mr X	1	1969	1,828	IDF	7 March 2019 and 12 July 2019	21 February 2019
6	1003075-O	N	N	Mr X	1	1989	731	IDF	9 April 2019	First Assessment
7	1003076-O	1	N	Mr X	1	1975	730	IDF	22 March 2019	First Assessment
8	1003085-O	N	N	Mr X	1	1955	787	Visa reinstated	8 April 2019	First Assessment
9	1003096-O	N	N	Mr X	1	1993	736	BV	30 April 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Bridging visa (BV).

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

Name	Mr X
Ombudsman ID	1001805-O3
<p>Mr X was detained in February 2013 after arriving in Australia by sea and has remained in an immigration detention facility for more than six years.</p> <p>In August 2016 Mr X's Safe Haven Enterprise Visa (SHEV) application was refused and in November 2016 the Immigration Assessment Authority (IAA) affirmed the refusal.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court (FCC). In April 2018 the FCC found that Mr X was not an unauthorised maritime arrival as described in s 5AA of the <i>Migration Act 1958</i> and therefore he is not a fast track applicant and was incorrectly informed of his review rights. The FCC quashed the IAA's decision and remitted the matter back to the Department of Home Affairs (the Department).</p> <p>In July 2018 Mr X was re-notified of the SHEV refusal and his rights to seek review. Mr X lodged an application for review by the Administrative Appeals Tribunal (AAT). Mr X attended a hearing in February 2019. At the date of the Department's report, a further hearing date had not been set.</p> <p>The Department's report advised that in October 2018 the Minister declined to consider Mr X's case under s 195A for the grant of a bridging visa.</p> <p>The Department's report further advised that Mr X's case was included in a group submission referred to the then-Assistant Minister to brief her on a number of long term detention cases. The submission provided the then-Assistant Minister an opportunity to indicate whether she was willing to consider the cases on an individual basis. In February 2019 the then-Assistant Minister indicated that Mr X's case should be referred for consideration under the Minister's personal intervention powers. The report stated that the Department would prepare a submission for Mr X's case and refer it to the Minister in due course.</p> <p>The International Health and Medical Services report stated that Mr X received treatment for complex physical and mental health concerns.</p> <p>IHMS advised that Mr X's prolonged detention was adversely impacting his physical and 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>The Ombudsman also notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns.</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 of granting a bridging visa under s 195A.	

Name	Mr X
Ombudsman ID	1001941-O1
<p>Mr X was detained in August 2013 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than three and a half years.</p> <p>Mr X was granted a bridging visa in November 2015 and released from detention.</p> <p>In July 2016 Mr X's Safe Haven Enterprise visa application was refused and in September 2016 the Immigration Assessment Authority affirmed the refusal.</p> <p>Mr X's last bridging visa ceased in August 2018 and he was re-detained in September 2018.</p> <p>The Department of Home Affairs' (the Department) report advised that Mr X does not have a valid travel document and is unwilling to return to Country A voluntarily. His removal is likely to be protracted as the authorities of Country A are currently not cooperating with the involuntary return of its citizens.</p> <p>The Department's report further advised that Mr X's case was found to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. At the time of the report the Department was preparing a submission.</p> <p>The International Health and Medical Services report stated that Mr X received treatment for complex physical and mental health concerns.</p> <p>In February 2019 a specialist counsellor recommended that Mr X be released into the community while his case was being determined because his detention is having a negative impact on his morale.</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 of granting a bridging visa under s 195A.	

Name	Mr X
Ombudsman ID	1001981-O3
<p>Mr X was detained in October 2012 after arriving in Australia by sea and has remained in an immigration detention facility for more than six and a half years.</p> <p>In July 2016 Mr X's Safe Haven Enterprise visa (SHEV) application was refused and in September 2016 the Immigration Assessment Authority (IAA) affirmed the refusal.</p> <p>Mr X lodged an application for judicial review in the Federal Circuit Court (FCC). In July 2018 the FCC found that Mr X was not an unauthorised maritime arrival as described in s 5AA of the <i>Migration Act 1958</i> and therefore he is not a fast track applicant and was incorrectly informed of his review rights. The FCC quashed the IAA's decision and remitted the matter back to the Department of Home Affairs (the Department).</p> <p>The Department's report of 23 October 2018 advised that in August 2018 the Minister requested a Federal Court review of the FCC's decision. In January 2019 the Minister withdrew from the proceedings.</p> <p>The Department's report advised that Mr X's case was found to be affected by a recent Federal Court decision.³ In January 2019 Mr X's entry status was changed from unauthorised maritime arrival to direct entry. As a result he was required to be re-notified of the SHEV refusal decision and his review rights.</p> <p>The Department's report further advised that Mr X's case was included in a group submission referred to the then-Assistant Minister to brief her on a number of long term detention cases. The submission provided the then-Assistant Minister an opportunity to indicate whether she was willing to consider the cases on an individual basis. In February 2019 the then-Assistant Minister indicated that Mr X's case should be referred for consideration under the Minister's personal intervention powers. The report stated that the Department would prepare a submission for Mr X's case and refer it to the Minister in due course.</p> <p>In April 2019 Mr X was re-notified of the SHEV refusal and his rights to seek review. Six days later Mr X sought review of the SHEV refusal with the Administrative Appeals Tribunal. At the time of the Department's report a hearing date had not been set.</p> <p>The International Health and Medical Services report stated that Mr X was monitored and received treatment as required for physical health concerns under care plans.</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>The Ombudsman also notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns.</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 of granting a bridging visa under s 195A.	

³ *DBB16 v Minister for Immigration and Border Protection* [2018] FCAFC 178.

Name	Mr X
Ombudsman ID	1002480-O3
<p>Mr X was detained in August 2014 on release from a correctional facility and has remained in an immigration detention facility for a cumulative period of more than five years.</p> <p>Mr X initially arrived in Australia in 1991 as a visitor. At the time he was a permanent resident of Country B as a refugee from Country A.</p> <p>Mr X's Country B residency permit expired in October 1992 following which he sought protection in Australia. In June 1993 Mr X applied for a Domestic Protection Temporary entry permit and he was recognised as a refugee in August 1993.</p> <p>In May 1994 Mr X applied for a permanent Protection entry permit which became an application for a Transitional (Permanent) visa following legislative changes.</p> <p>In January 2013 Mr X's visa application was refused under s 501 of the <i>Migration Act 1958</i> following criminal convictions. The Department of Home Affairs' (the Department) report advised that Mr X was convicted of numerous offences between May 1992 and August 2014 and was sentenced to multiple terms of imprisonment.</p> <p>The Administrative Appeals Tribunal affirmed the refusal of Mr X's visa application in March 2013. His applications for judicial review in the Federal Court and Full Federal Court were dismissed.</p> <p>In February 2016 a revised International Treaties Obligations Assessment found Mr X's case engaged Australia's <i>non-refoulement</i> obligations; however it was identified that he was excluded under s 36(1C) because he was unable to satisfy the Protection visa criteria.</p> <p>The Department's report of 27 August 2018 advised that Mr X was not able to be involuntarily removed to Country A because his case continues to engage Australia's protection and <i>non-refoulement</i> obligations.</p> <p>The Department's report of 12 July 2019 advised that Mr X's case was identified for an assessment against the s 195A guidelines in November 2018 and that the matter continued to be considered.</p> <p>The International Health and Medical Services (IHMS) report stated that Mr X received treatment for complex physical and mental 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>The Ombudsman also notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns, and that his case continues to engage Australia's protection and <i>non-refoulement</i> obligations</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 of granting a bridging visa under s 195A. 	

Name	Mr X
Ombudsman ID	1003076-O
<p>Mr X was detained in May 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than two years.</p> <p>Mr X was granted a bridging visa in August 2012 and was released from detention.</p> <p>In September 2012 Mr X's Protection visa application was refused and in March 2013 the Refugee Review Tribunal affirmed the refusal. His applications for judicial review in the Federal Circuit Court and Federal Court were dismissed in December 2015 and May 2016 respectively.</p> <p>Mr X's last bridging visa ceased in June 2016 and he was re-detained in July 2017.</p> <p>Mr X requested removal from Australia in July 2017. The Department of Home Affairs' (the Department) report advised that the authorities of Country A are unwilling to issue him a travel document due to the lack of sufficient identification.</p> <p>The Department's report further advised Mr X's case was found to meet the guidelines under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. At the time of the report the Department was preparing a submission.</p> <p>The International Health and Medical Services report stated that Mr X did not require treatment for any physical or mental 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>The Ombudsman also notes the absence of any recent behavioural or security concerns.</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 of granting a bridging visa under s 195A.	