

Our ref: 486N-1000399-O2

13 March 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 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 13 recommendations in relation to eight 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*. For the purposes of further assessment, my office conducted interviews with three individuals on the schedule, Mr X (1000399-O2), Mr X (1001173-O2) and Mr X (1002703-O1).

I note that at the time of the Department's latest report, dated 21 November 2018, Mr X (1002908-O) had been identified for assessment against the s 195A guidelines for consideration for the grant of a bridging visa. Removal is likely to be protracted for Mr X as involuntary removal to Country A is not possible at present. Mr X's prolonged placement in immigration detention poses a risk to his mental and physical 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	1000399-O2	2	Mr X	1	1970	3,104	IDF	23 April 2018 and 30 October 2018	25 June 2018
2	1000689-O3	2	Mr X	1	1977	2,924	IDF	27 April 2018 and 5 November 2018	18 June 2018
3	1000966-O3	2	Mr X	1	1976	2,373	IDF	2 May 2018 and 5 November 2018	18 June 2018
4	1001123-O1	0	Mr X	1	1995	1,643	IDF	3 September 2018	18 June 2018
5	1001173-O2	2	Mr X	1	1992	2,191	IDF	7 May 2018 and 9 November 2018	21 March 2018
6	1001678-O3	1	Mr X	1	1979	2,008	IDF	30 October 2018	9 May 2018
7	1002115-O2	0	Mr X	1	1972	1,825	IDF	23 August 2018	18 June 2018
8	1002535-O2	1	Mr X	1	1987	1,460	IDF	26 April 2018 and 22 October 2018	18 June 2018
9	1002703-O1	0	Mr X	1	1976	1,095	IDF	2 July 2018 and 24 December 2018	9 May 2018
10	1002741-O1	0	Mr X	1	1986	1,095	IDF	18 August 2018	18 June 2018
11	1002756-O1	0	Mr X	1	1963	1,095	IDF	5 September 2018	25 June 2018
12	1002757-O1	0	Mr X	1	1969	1,095	Removed	5 September 2018	25 June 2018
13	1002874-O1	0	Mr X	1	1976	912	IDF	9 October 2018	28 November 2018
14	1002887-O	2	Mr X	1	1972	730	IDF	24 April 2018 and 31 October 2018	First Assessment
15	1002897-O	1	Mr X	1	1967	1,095	IDF	10 May 2018, 29 May 2018 and 28 November 2018	First Assessment
16	1002908-O	0	Mr X	1	1987	912	IDF	23 May 2018 and 21 November 2018	First Assessment
17	1002965-O	0	Mr X	1	1985	730	IDF	29 August 2018	First Assessment
18	1002966-O	0	Mr X	1	1986	730	IDF	30 August 2018	First Assessment
19	1002968-O	0	Mr X	1	1986	731	IDF	3 September 2018	First Assessment
20	1002984-O	0	Mr X	1	1992	730	IDF	10 October 2018	First Assessment

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

<sup>2</sup> Immigration Detention Facility (IDF), Removed.

**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>	1000399-02
<p>Mr X was detained in May 2010 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and a correctional facility, for more than eight and a half years.</p> <p>Mr X lodged a Protection visa application that was refused in February 2014. The Refugee Review Tribunal affirmed the refusal in May 2014 and the Federal Circuit Court dismissed Mr X's application for judicial review in November 2014.</p> <p>In August 2015 the Department of Home Affairs (the Department) finalised an International Treaties Obligations Assessment, determining that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.</p> <p>In April 2016 and August 2017 the Minister lifted the bars under ss 46A and 46B of the <i>Migration Act 1958</i> to allow Mr X to lodge an application for a Temporary Protection visa or a Safe Haven Enterprise visa (SHEV).</p> <p>Mr X lodged a SHEV application and in October 2017 the application was deemed invalid as it was lodged outside of the period for which the bar was lifted.</p> <p>Mr X was referred for removal in October 2017. At the date of the Department's latest report, Mr X did not possess a valid travel document and the Department was unable to action his removal.</p> <p>In October 2018 Mr X was identified for a possible referral to the Minister under s 195A for the grant of a bridging visa. The matter remained ongoing at the time of the Department's latest report, dated 30 October 2018.</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>International Health and Medical Services advised that Mr X continued to receive treatment for numerous mental health concerns.</p> <p>In October 2018 Mr X advised that he had a health concern which made living at Facility Y difficult. He advised that previous assistance had been ineffective. Mr X stated that if he was transferred to a smaller facility, such as Facility Z he would be able to move around more easily as more of the centre is under cover.</p> <p>The Ombudsman considers that Facility Z is the most appropriate location for the management of Mr X's health concern.</p> <p>In January 2019 the Department advised that Mr X had been reviewed by a general practitioner and a mental health nurse in October 2018 who both confirmed that Mr X had an ongoing health concern.</p>	

Attachment B

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1000399-02
<b>Recommendation</b>	
The Ombudsman recommends that the Department:	
<ol style="list-style-type: none"><li>1. Consider transferring Mr X to Facility Z to enable him to manage his health concern.</li><li>2. Refer Mr X's case to the Minister for consideration under s 195A for the grant of a bridging visa, noting the significant length of time he has remained in immigration detention and his ongoing mental health concerns.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1000689-03
<p>Mr X was detained in November 2010 after arriving in Australia by sea and has remained in an immigration detention facility for more than eight years.</p> <p>In November 2017 the Federal Circuit Court (FCC) quashed the Administrative Appeal Tribunal's (AAT) decision to affirm the refusal of Mr X's Safe Haven Enterprise visa (SHEV) application and remitted his case for reconsideration.</p> <p>On 10 April 2018 the Ombudsman recommended that Mr X's case be referred to the Minister for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. The Ombudsman also recommended if Mr X was not granted a bridging visa, he be considered for transfer to Facility Y so that he could reside closer to his support network.</p> <p>On 18 June 2018 the Minister advised that Mr X had been identified for assessment against the s 195A guidelines for a possible referral for consideration of the grant of a bridging visa. The Minister also advised that a transfer to Facility Y was not possible at that time due to capacity issues.</p> <p>In July 2018 the AAT's reconsideration affirmed the decision to refuse Mr X's SHEV application.</p> <p>In August 2018 Mr X sought judicial review of the AAT decision with the FCC and at the time of the Department of Home Affairs' (the Department) latest report, dated 5 November 2018, Mr X continued to await the outcome.</p> <p>On 5 November 2018 the Department advised it was preparing a submission for the Minister, which will brief him on a number of long term detention cases, including Mr X. The Department advised that this submission will give the Minister an opportunity to indicate if he is willing to consider these cases on an individual basis.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to be prescribed with medication for mental health concerns. IHMS further advised that Mr X felt isolated and emotional as a result of being placed far away from his support network.</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 Minister consider Mr X's case under s 195A for the grant of a bridging visa, in light of the length of time he has remained in detention and the absence of any recent behavioural or security concerns.</li> <li>2. If Mr X is not granted a bridging visa, that a transfer to Facility Y is expedited.</li> </ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1000966-03
<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 six and a half years.</p> <p>At the time of the Department of Home Affairs' (the Department) report, Mr X continued to await the outcome of merits review at the Administrative Appeals Tribunal (AAT) lodged in August 2016. Mr X attended a two-day hearing at the AAT in August 2018 and the decision was reserved.</p> <p>The Ombudsman's previous assessment recommended that the Minister expedite consideration of Mr X's case under s 195A for the grant of a bridging visa. On 18 June 2018 the Minister advised that Mr X had been identified for assessment against the s 195A guidelines for possible referral to the Minister for his consideration to grant him a bridging visa.</p> <p>In July 2018 a delegate of the Minister determined that Mr X's case did not meet the requirements for a referral for assessment against the s 195A guidelines.</p> <p>On 5 November 2018 the Department advised that it was preparing a submission to the Minister which will brief him on a number of long-term detention cases and give him an opportunity to indicate if he is willing to consider the cases on an individual basis. Mr X's case is included in that submission.</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>International Health and Medical Services advised that Mr X continued to receive treatment for complex mental health concerns related to his ongoing detention and separation from familial and social supports.</p> <p>In June 2018 a specialist counsellor reported that protracted detention is re-traumatising and that Mr X's separation from his family is a major source of grief and suffering. The counsellor recommended that Mr X be considered for release into the community to be reunited with his family and to prevent further deterioration in his psychological health and that of his family.</p> <p><b>Recommendation</b></p> <p>The Ombudsman recommends that:</p> <ol style="list-style-type: none"><li>1. Given the absence of any recent behavioural or security concerns, the Department review its assessment of Mr X's risk to the community.</li><li>2. The Minister consider Mr X's case under s 195A for the grant of a bridging visa.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1001173-O2
<p>Mr X was initially detained in October 2011 after being refused immigration clearance and has remained in an immigration detention facility for a cumulative period of more than six years.</p> <p>In September 2015 an International Treaties Obligation Assessment (ITOA) determined that Mr X did not engage Australia's <i>non-refoulement</i> obligations. In July 2017 the Federal Circuit Court (FCC) found that the ITOA decision was affected by legal error and in November 2018 the Department of Home Affairs (the Department) advised that it continued to consider the FCC's decision.</p> <p>The Ombudsman notes that Mr X remains a person of interest to the Department in relation to alleged offshore criminal matters. The Department advised that Mr X remains in an immigration detention facility as he has been assessed as posing a high risk to the Australian community. In August 2018 Mr X was found not to meet the guidelines under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.</p> <p>During an interview with Ombudsman staff in September 2018 Mr X advised that he sustained significant injuries after being assaulted by other detainees and no longer feels safe in immigration detention.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for mental health concerns and for injuries sustained from assault incidents. During a mental health review Mr X reported stress related to his prolonged detention and fear for his safety due to threatening behaviour from other detainees. A psychiatrist noted that Mr X presented with hypervigilance, insomnia and acute panic symptoms. IHMS reported that Australian Border Force staff were aware of the risks posed to Mr X from other detainees.</p> <p>The Department advised that Mr X was transferred from Facility Y to Facility Z following the grant of an order in his favour.</p> <p>Mr X lodged a complaint with the Office of the Commonwealth Ombudsman and raised concerns about his safety in the higher security compound at Facility Z. He advised that he had requested to be transferred to a lower security compound.</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 the Department:</p> <ol style="list-style-type: none"><li>1. Consider placing Mr X in a lower security compound within Facility Z, with a view to supporting his safety and welfare while he remains in immigration detention.</li><li>2. Expedite consideration of Mr X's case in light of the FCC's decision in July 2017 that Mr X's ITOA was affected by legal error.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1001678-O3
<p>Mr X was detained in May 2013 after arriving in Australia by sea and has remained in an immigration detention facility for more than five and a half years.</p> <p>Mr X lodged a Safe Haven Enterprise visa (SHEV) application in January 2016 that was refused in July 2016. The refusal decision was affirmed by the Immigration Assessment Authority (IAA) in August 2016. Mr X lodged an application for judicial review in the Federal Circuit Court (FCC) and in July 2017 the FCC quashed the IAA's decision and directed the IAA to reconsider the matter according to law.</p> <p>The Minister appealed the FCC's decision to the Full Federal Court and subsequently to the High Court. In April 2018 the High Court dismissed the Minister's application for special leave to appeal and the IAA commenced reconsideration of the refusal decision.</p> <p>In July 2018 the IAA affirmed the decision not to grant Mr X's SHEV application. In August 2018 Mr X lodged an application for judicial review with the FCC and a hearing was scheduled for March 2019.</p> <p>The Ombudsman's previous assessment recommended that in light of the significant length of time that Mr X has remained in detention and in the absence of any recent behavioural or security concerns, Mr X's case be referred to the Minister for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.</p> <p>On 9 May 2018 the Minister advised that Mr X had recently been assessed against the s 195A guidelines and had been found not to meet the guidelines for referral.</p> <p>International Health and Medical Services advised that Mr X received treatment for complex mental health concerns. In May 2018 a psychiatrist advised that Mr X's mental state appeared to be deteriorating and in June 2018 Serco officers expressed the same concerns.</p> <p>A further mental health consultation in June 2018 reported a possible deterioration in Mr X's mental state exacerbated by his length of time in detention and uncertain future. A psychiatrist advised that should Mr X's mental state deteriorate further he may need to be considered for admission to a hospital.</p> <p>In August 2018 a counsellor noted that Mr X was coping reasonably well despite ongoing symptoms. The Department of Home Affairs (the Department) advised that as at October 2018, Mr X indicated an awareness of the medical request process and had no current issues to report.</p> <p>In October 2018 the Department advised that it was preparing a submission for the Minister which will brief him on a number of long-term detainees and give him the opportunity to indicate if he is willing to consider the cases on an individual basis. Mr X's case is included in that submission.</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 Minister consider Mr X's case under s 195A for the grant of a bridging visa, noting the identified risk of deterioration of his mental health.</li> </ol>	



<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002535-02
<p>Mr X was detained in February 2012 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>The Department of Home Affairs (the Department) advised that Mr X has been found not be owed protection under the <i>Migration Act 1958</i> and is on an involuntary removal pathway.</p> <p>At the time of the Department's latest report, dated 22 October 2018, it was advised that removal was not practicable at this time. The Department advised it would facilitate Mr X's removal from Australia when possible.</p> <p>International Health and Medical Services (IHMS) advised that Mr X received treatment for multiple complex mental and physical health concerns.</p> <p>In February and August 2018 IHMS advised that Mr X's detention placement was leading to a decline in his mental state. A specialist counsellor advised that Mr X's psychological functioning and physical health were more likely to improve if he was placed in the community near his family.</p> <p>IHMS further advised that Mr X required treatment for multiple physical health concerns, however he had declined to attend specialist medical appointments due to the use of mechanical restraints.</p> <p>In October 2018 Mr X's case was referred to the Minister for his consideration for the grant of a Final Departure Bridging visa under s 195A.</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 Minister consider Mr X's case under s 195A for the grant of a bridging visa.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002887-O
<p>Mr X was detained in June 2013 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 was previously granted a bridging visa that was cancelled under s 116 of the <i>Migration Act 1958</i> in June 2016 following criminal charges.</p> <p>In December 2016 Mr X lodged a Safe Haven Enterprise visa application that was refused in May 2017. The Immigration Assessment Authority affirmed the refusal and in July 2017 Mr X requested removal from Australia.</p> <p>The Department of Home Affairs (the Department) advised that Mr X has no ongoing matters with the Department, courts or tribunals and is on a voluntary removal pathway.</p> <p>In February 2018 the Department lodged an application for a travel document on behalf of Mr X with the authorities of Country A. The matter remained ongoing at the time of the Department's latest report, dated 31 October 2018.</p> <p>International Health and Medical Services advised that Mr X expressed sadness and frustration regarding his prolonged detention. Mr X stated that he had family in City B and he believed that he would benefit from residing at Facility Y to enable him to receive visitations.</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 expedite Mr X's voluntary removal, noting that Mr X requested removal in July 2017.</li><li>2. The Department consider transferring Mr X to Facility Y to enable him to reside closer to his family and support network while the Department progresses his removal.</li></ol>	

<b>Name</b>	Mr X
<b>Ombudsman ID</b>	1002897-O
<p>Mr X was initially detained in May 2005 and was re-detained following his release from a correctional facility in September 2016. He has remained in an immigration detention facility for a cumulative period of more than three years.</p> <p>Mr X's Resolution of Status visa was mandatorily cancelled under s 501 of the <i>Migration Act 1958</i> in November 2015 and the Assistant Minister decided not to revoke the cancellation decision in November 2016. The Federal Court quashed the Assistant Minister's decision in April 2018 and remitted the matter for consideration according to law. The Department of Home Affairs (the Department) continued to reconsider the matter at the time of its latest report, dated 28 November 2018.</p> <p>International Health and Medical Services (IHMS) advised that Mr X was diagnosed with a mental health condition for which he has refused treatment. A psychiatrist advised that although Mr X was assessed as being at low risk, a risk assessment would be required if Mr X was considered for a community placement.</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 Facility Y to enable him to be closer to his wife who resides in City A, while he awaits the Department's reconsideration of his case.</li></ol>	