

Our ref: 486N-1000675-O3

29 October 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 10 cases on the schedule (Attachment A) regarding 10 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 10 cases on the schedule and has made two recommendations in relation to one case (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*.

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	1000675-O3	2	N	Mr X	1	1967	3,110	IDF	2 May 2019	31 July 2019
2	1000689-O4	N	N	Mr X	1	1977	3,108	IDF	8 May 2019	9 September 2019
3	1002387-O4	N	N	Mr X	1	1984	2,109	IDF	3 May 2019	4 July 2019
4	1002643-O3	N	N	Mr X	1	1989	1,460	IDF	19 April 2019	9 September 2019
5	1002657-O3	N	N	Mr X	1	1970	1,470	Visa reinstated	13 May 2019	12 September 2019
6	1002661-O3	N	N	Mr X	1	1986	1,469	IDF	8 May 2019	12 September 2019
7	1002899-O2	N	N	Mr X	1	1989	1,097	IDF	8 May 2019	9 September 2019
8	1002992-O1	N	N	Ms X	1	1960	916	CF	6 May 2019	12 September 2019
9	1003101-O	N	N	Ms X	1	1988	730	IDF	3 May 2019	First Assessment
10	1003102-O	N	N	Mr X	1	1960	738	Removed	10 May 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Correctional Facility (CF), Substantive Visa reinstated, Removed.

**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	1000675-O3
<p>Mr X was detained in October 2010 after arriving in Australia by sea and has remained in immigration detention, in a detention facility and the community, for a cumulative period of more than eight and a half years.</p> <p>Mr X was granted a bridging visa in November 2014 and was released from detention. Eight days later his bridging visa was cancelled under s 116 of the <i>Migration Act 1958</i> and Mr X was re-detained following criminal charges. Mr X sought review of the cancellation and in December 2014 the Migration Review Tribunal found it had no jurisdiction to review the decision.</p> <p>In November 2015 Mr X was convicted of a charge and received a fine. The other charges were dropped.</p> <p>In May 2017 Mr X's Temporary Protection visa application was refused and in October 2017 the Administrative Appeals Tribunal affirmed the refusal. In January 2019 the Federal Circuit Court dismissed his application for judicial review.</p> <p>The Department of Home Affairs' (the Department) reports of 23 October 2017 and 29 October 2018 advised that Mr X's case was referred to the Minister in August 2017 and October 2018 for consideration under s 195A for a bridging visa. On both occasions the Minister declined to consider Mr X's case.</p> <p>The Department's report of 2 May 2019 advised that Mr X's case was also included in the long term detention submission referred to the then-Assistant Minister to provide her an opportunity to indicate whether she was willing to consider cases on an individual basis. In February 2019 the then-Assistant Minister indicated that Mr X's case should not be referred for consideration under ministerial intervention powers.</p> <p>The Department's report further advised that Mr X had no outstanding matters before the Department, tribunals or the courts and was on an involuntary removal pathway.</p> <p>The Department's report of 2 May 2019 advised that Mr X does not have a valid travel document and is unwilling to return to Country A voluntarily. The authorities of Country A are currently not cooperating with the involuntary return of its citizens and as a result Mr X's removal is likely to be protracted.</p> <p>The Department's report advised that Mr X remains in an immigration detention facility because, due to his criminal history, he has been assessed as posing a risk to the community and requires ministerial intervention to be granted a bridging visa.</p> <p>The International Health and Medical Services (IHMS) report stated that Mr X received treatment for physical 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>	

Name	Mr X (continued)
Ombudsman ID	1000675-O3
Recommendation	
Noting the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns, the Ombudsman recommends that:	
<ol style="list-style-type: none">1. Mr X's case be referred for an assessment against the guidelines under s 195A for consideration of a bridging visa.2. An independent review of Mr X's potential risk to the community be undertaken to inform whether he could be recommended for the grant of a bridging visa or community placement.	