

Our ref: 486N-1000757-O

 November 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	1000757-O	N	N	Mr X	1	1996	1,648	Removed	9 May 2019	27 May 2019
2	1001301-O1	N	N	Mr X	1	1978	1,462	SHEV	22 May 2019	12 September 2019
3	1001332-O4	N	N	Mr X	1	1997	2,382	IDF	15 May 2019	12 September 2019
4	1002655-O2	2	N	Mr X	1	1980	1,467	IDF	9 May 2019	31 July 2019
5	1002892-O1	N	N	Ms X	1	1968	1,097	IDF	1 May 2019	9 September 2019
6	1002901-O1	N	N	Mr X	1	1987	1,107	BV	24 May 2019	9 September 2019
7	1002994-O1	N	N	Mr X	1	1983	1,097	IDF	10 May 2019	12 September 2019
8	1002996-O1	N	N	Mr X	1	1995	1,102	IDF	14 May 2019	12 September 2019
9	1003105-O	N	N	Mr X	1	1971	730	IDF	7 May 2019	First Assessment
10	1003108-O	N	N	Mr X	1	1985	732	IDF	13 May 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Bridging visa (BV), Safe Haven Enterprise visa (SHEV), 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	1002655-O2
<p>Mr X was detained in May 2015 following his release from a correctional facility and has remained in an immigration detention facility for more than four years.</p> <p>In April 2015 Mr X's visa was mandatorily cancelled under s 501 of the <i>Migration Act 1958</i> following criminal convictions. In May 2015 Mr X lodged a request for revocation of the cancellation of his visa. In September 2016 the then-Assistant Minister decided not to revoke the decision to cancel Mr X's visa.</p> <p>In December 2016 Mr X's application for judicial review in the Federal Circuit Court was dismissed.</p> <p>The Department of Home Affairs' (the Department) report of 2 May 2017 advised that in December 2016 Mr X requested that the Minister exercise his discretion to substitute a decision of a merits review tribunal under s 417. The report advised that in January 2017 Mr X's case was found not to meet the guidelines for referral to the Minister under s 417.</p> <p>The Department's report also advised that as Mr X had no outstanding matters before the Department, tribunals or the courts, his case was referred for involuntary removal action.</p> <p>The Department's report of 31 October 2018 advised that Mr X's removal was protracted because of difficulties associated with the Government of Country A issuing a travel document to citizens with criminal records in foreign countries. The Department's report advised that the Department continued to engage with the Government of Country A to facilitate Mr X's removal.</p> <p>The Ombudsman's previous assessment recommended that the Department consider transferring Mr X to Facility Z to enable him to reside closer to his family while his involuntary removal remains protracted.</p> <p>On 31 July 2019 the Minister advised in a tabling statement that Mr X's placement had been reviewed and a transfer to Facility Z was not possible at the time because of capacity issues.</p> <p>In response to a request for information, in September 2019 the Department advised that Mr X had submitted a request for transfer to Facility Z in late July 2019. The request was declined because of capacity issues and Mr X was notified of the decision in writing.</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>Noting the length of time Mr X has resided in detention and the protracted nature of his removal, the Ombudsman recommends that:</p> <ol style="list-style-type: none">1. The Department consider transferring Mr X to Facility Z so he can reside closer to his family.2. If a transfer is not possible at this time because of capacity issues, the Australian Border Force monitor the situation and transfer Mr X to Facility Z as soon as a place becomes available.	