

Our ref: 486N-1000230-O1

27 February 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 three 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 of the Act or s 8 of the *Ombudsman Act 1976*. For the purposes of further assessment, my office conducted interviews with Mr X (1002910-O1) and Mr X (1002948-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. 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	1000230-O1	0	Mr X	1	1979	1,277	IDF	5 June 2018 and 5 December 2018	25 June 2018
2	1000675-O2	0	Mr X	1	1967	2,922	IDF	23 April 2018 and 29 October 2018	21 March 2018
3	1001388-O2	1	Mr X	1	1991	2,018	IDF	15 May 2018 and 27 November 2018	9 May 2018
4	1001593-O3	0	Mr X	1	1977	2,005	Removed	12 June 2018	25 June 2018
5	1001833-O2	0	Mr X	1	2001	2,001	CD	22 June 2018 and 28 December 2018	9 May 2018
6	1002558-O2	0	Mr X	1	1977	1,462	IDF	27 June 2018 and 24 December 2018	25 June 2018
7	1002719-O1	2	Mr X	1	1998	1,289	IDF	25 July 2018 and 4 February 2019	9 May 2018
8	1002749-O1	0	Mr X	1	1984	1,095	Removed	30 August 2018	18 June 2018
9	1002799-O1	0	Mr X	1	1982	1,097	IDF	12 November 2018	26 November 2018
10	1002806-O1	0	Mr X	1	1991	912	BV	25 May 2018	25 June 2018
11	1002812-O1	0	Mr X	1	1983	913	FDBV	18 June 2018	25 June 2018
12	1002910-O1	0	Mr X	1	1989	913	Protection visa	19 November 2018	13 February 2019
13	1002911-O	0	Mr X	1	1985	913	IDF	23 May 2018 and 19 November 2018	First Assessment
14	1002914-O	0	Mr X	1	1992	912	IDF	1 June 2018 and 30 November 2018	First Assessment
15	1002917-O	0	Mr X	1	1970	912	IDF	4 June 2018 and 4 December 2018	First Assessment
16	1002919-O	0	Mr X	1	1985	913	IDF	4 June 2018 and 3 December 2018	First Assessment
17	1002945-O	0	Mr X	1	1985	921	IDF	23 July 2018 and 29 January 2019	First Assessment
18	1002948-O	0	Mr X	1	1958	912	IDF	26 July 2018 and 24 January 2019	First Assessment
19	1003005-O	0	Mr X	1	1969	730	IDF	19 November 2018	First Assessment
20	1003009-O	0	Mr X	1	1989	731	BV	26 November 2018	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), Bridging visa (BV), Removed, Final Departure Bridging visa (FDBV), Protection visa.

**RECOMMENDATIONS BY THE COMMONWEALTH OMBUDSMAN TO
THE MINISTER FOR HOME AFFAIRS**
Under s 486O of the Migration Act 1958

Name	Mr X
Ombudsman ID	1001388-02
<p>Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in an immigration detention facility for more than five and a half years.</p> <p>In June 2014 Mr X lodged a Protection visa application which was refused in December 2014. The Refugee Review Tribunal (RRT) affirmed the refusal in June 2015 and in September 2015 Mr X applied to the Federal Circuit Court (FCC) for judicial review.</p> <p>In February 2016 the FCC quashed the RRT decision and remitted the matter for reconsideration according to law. In July 2016 the Administrative Appeals Tribunal (AAT) set aside the decision to refuse Mr X's Protection visa and substituted a decision to refuse to grant Mr X a Temporary Protection visa.</p> <p>Mr X applied to the FCC for judicial review in August 2016. The FCC dismissed the application in August 2017 and Mr X applied to the Federal Court for judicial review. In August 2018 the Federal Court remitted the matter to the AAT for reconsideration according to law. The matter remained ongoing at the time of the Department of Home Affairs' (the Department) latest report, dated 27 November 2018.</p> <p>In August 2018 Mr X was referred for assessment against the guidelines under s 195A of the <i>Migration Act 1958</i> for possible referral to the Minister for consideration for the grant of a bridging visa. The matter remained ongoing at the date of the Department's latest report.</p> <p>In May 2013 Mr X allegedly escaped from detention and was re-detained on the same day. In July 2015 Mr X was acquitted of any charges in relation to this matter. The Ombudsman notes that Mr X has not been involved in any recent behavioural or security concerns.</p> <p>The Ombudsman further 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. The Minister consider Mr X's case under s 195A for the grant of a bridging visa.	

Name	Mr X
Ombudsman ID	1002719-01
<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 which was cancelled under s 116 of the <i>Migration Act 1958</i> in November 2016 following criminal charges. He was included as a dependant on his mother's Safe Haven Enterprise visa (SHEV) application which was lodged in April 2017.</p> <p>The Department of Home Affairs (the Department) advised that its assessment of the family's SHEV application remains ongoing. Following the finalisation of his criminal matters, in October 2018 Mr X was issued with a Notice of Intention to Consider Refusal of his application for a dependant SHEV under s 501.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for multiple mental health concerns in the context of his prolonged detention. He was reviewed by a psychiatrist who noted that he was experiencing stress, sleeping difficulties, feelings of isolation and nightmares. The treating psychiatrist reported that Mr X was fearful of other detainees and had allegedly been assaulted but was afraid of reporting the incidents.</p> <p>IHMS advised that it is likely Mr X's health and welfare is being adversely affected by his current placement and a psychiatrist reported that the environment of an immigration detention facility is having a detrimental impact on his emotional wellbeing.</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>In the previous reporting period the Department provided the Office with information in relation to Mr X's case progression and criminal history that was incorrect. This information was reflected in the Office's assessment of the appropriateness of Mr X's circumstances in detention. Mr X has since been notified of these errors and the Department has taken steps to prevent a reoccurrence.</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 in close proximity to his family who reside in State A.2. If it is not deemed appropriate to place Mr X in the community, the Department consider placing Mr X in a lower security placement appropriately catered to his mental health and in close proximity to his family.	