

Our ref: 486N-1000936-O

23 April 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 four recommendations in relation to four 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*.

Mr X's (1002559-O2) visa was cancelled under s 501 and Mr X's (1002661-O2) visa was cancelled under s 116 of the Act. Mr X and Mr X have no ongoing matters before the Department of Home Affairs, the courts or tribunals and are on an involuntary removal pathway. Given the violent nature of their criminal offences, I do not consider it appropriate to make a recommendation in relation to the grant of a bridging visa or a community placement at this time. However, I note the obstacles applying to their removal from Australia are likely to result in a prolonged placement in immigration detention, which poses a serious risk to their physical and mental health.

Yours sincerely



Jaala Hinchcliffe
Acting 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	1000936-O	0	Mr X	1	1995	1,095	IDF	13 November 2018	25 February 2015
2	1001062-O2	1	Mr X	1	1989	2,383	IDF	24 July 2018 and 31 January 2019	25 June 2018
3	1001341-O	0	Mr X	1	1986	1,095	IDF	12 July 2018 and 11 January 2019	20 October 2018
4	1001728-O3	1	Mr X	1	1974	2,009	IDF	22 October 2018	26 November 2018
5	1001856-O3	1	Mr X	1	1990	2,010	IDF	15 October 2018	13 February 2019
6	1001953-O3	1	Mr X	1	1982	2,008	IDF	30 July 2018 and 29 January 2019	9 May 2018
7	1002559-O2	0	Mr X	1	1967	1,461	IDF	26 June 2018 and 28 December 2018	25 June 2018
8	1002642-O2	0	Mr X	1	1992	1,460	IDF	18 September 2018 and 21 March 2019	26 November 2018
9	1002656-O2	0	Mr X	1	1993	1,277	IDF	31 October 2018	13 February 2019
10	1002657-O2	0	Mr X	1	1970	1,284	IDF	7 November 2018	13 February 2019
11	1002661-O2	0	Mr X	1	1986	1,277	IDF	28 October 2018	13 February 2019
12	1002672-O2	0	Mr X	1	1981	1,643	IDF	26 November 2018	Awaiting Tabling
13	1002705-O1	0	Mr X	1	1950	1,095	Visa	5 July 2018	21 March 2018
14	1002900-O1	0	Mr X	1	1985	912	IDF	10 November 2018	21 February 2019
15	1002941-O	0	Mr X	1	1981	912	IDF	10 July 2018 and 9 January 2019	First Assessment
16	1002962-O	0	Mr X	1	1964	730	Visa	18 August 2018	First Assessment
17	1002987-O	0	Mr X	1	1991	730	IDF	17 October 2018	First Assessment
18	1002994-O	0	Mr X	1	1983	912	IDF	6 November 2018	First Assessment
19	1002998-O	0	Mr X	1	1984	732	Removed	12 November 2018	First Assessment
20	1003006-O	0	Mr X	1	1982	730	IDF	20 November 2018	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Removed and 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	1001062-O2
<p>Mr X was detained in July 2012 after arriving in Australia by sea and has remained in immigration detention for more than six and a half years.</p> <p>Mr X lodged an application for a Protection visa in April 2013 which was refused in July 2013. In October 2013 the Refugee Review Tribunal (RRT) remitted the matter with the direction that Mr X was owed protection under the Refugee Convention and complementary protection criterion.</p> <p>In March 2014 the Department of Home Affairs (the Department) finalised its reconsideration and refused Mr X's Protection visa application as he failed to satisfy clause 866.222 of the Migration Regulations 1994 (the Regulations).</p> <p>In July 2014 the RRT remitted Mr X's case for the second time with the direction he satisfied clause 866.221(2) of the Regulations. In July 2015 the Department advised the second reconsideration of Mr X's application was on hold until an identity assessment and an ongoing police investigation were finalised.</p> <p>In July 2016 the Department advised it had commenced processing of Mr X's protection claims and that following legislative amendments in 2015, Mr X's Protection visa application was deemed to be an application for a Temporary Protection visa.</p> <p>In January 2017 Mr X's identity was found not to be supported under s 91W of the <i>Migration Act 1958</i> and his Temporary Protection visa application was refused. The Administrative Appeals Tribunal affirmed the refusal in March 2017.</p> <p>In December 2017 the Minister declined to intervene under s 195A to grant Mr X a bridging visa.</p> <p>In June 2018 the Federal Circuit Court dismissed the matter. Mr X requested judicial review by the Federal Court (FC) and in November 2018 the FC reserved judgment.</p> <p>In September 2018 Mr X's case was referred for assessment against the s 195A guidelines.</p> <p>On 31 January 2019 the Department advised that Mr X's case was included on a submission for the Minister to brief him on a number of long term detention cases. The submission will give the Minister an opportunity to indicate if he is willing to consider these cases on an individual basis under his s 195A intervention powers.</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 further notes that Mr X is a national of Country A. Upon finalisation of his immigration matters he is likely to remain in Australia for a protracted period as involuntary removal to Country A is not currently possible.</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 195A for the grant of a bridging visa, given the significant length of time he has remained in detention and his likely protracted removal.	

Attachment B

Name	Mr X
Ombudsman ID	1001728-O3
<p>Mr X was detained in April 2013 after arriving in Australia by sea and has been held in an immigration detention facility for more than five and a half years.</p> <p>Mr X's Safe Haven Enterprise visa (SHEV) application was refused by the Department of Home Affairs (the Department) in July 2017. The Immigration Assessment Authority (IAA) affirmed the Department's refusal decision in September 2017.</p> <p>Mr X sought judicial review of the IAA's decision with the Federal Circuit Court (FCC). In August 2018 the FCC declared that the applicant is not an 'unauthorised maritime arrival' and therefore the applicant was not correctly notified of the SHEV refusal decision.</p> <p>In August 2018 Mr X sought merits review with the Administrative Appeals Tribunal regarding the Department's refusal of his SHEV application. This matter remained ongoing at the time of the Department's report dated 22 October 2018.</p> <p>International Health and Medical Services (IHMS) advised that Mr X has required support for the management of 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>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 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa, given the significant length of time he has remained in detention and the absence of any recent behavioural or security concerns.	

Attachment B

Name	Mr X
Ombudsman ID	1001856-O3
<p>Mr X was detained in April 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>His Safe Haven Enterprise visa application was refused by the Department of Home Affairs (the Department) in July 2016. The Immigration Assessment Authority (IAA) affirmed the Department's refusal in September 2016. Applications for judicial review with the Federal Circuit Court (FCC) and the Federal Court (FC) were dismissed in February 2017 and in December 2017 respectively.</p> <p>Mr X sought further review of the IAA's decision with the FCC, on a new ground. The matter was dismissed in September 2018 and further review by the FC was dismissed in November 2018.</p> <p>Mr X is on an involuntary removal pathway which remains protracted due to the anticipated delays in obtaining a travel document from Country A. The Department advised in its report dated 15 October 2018 that it is currently preparing a submission to the Minister for his consideration to grant Mr X a bridging visa.</p> <p>In December 2017 the Ombudsman recommended that Mr X be considered under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. In March 2018 the Minister's tabling statement advised that as Mr X was expected to depart Australia, the Department did not consider bridging visa referrals to be appropriate at that time.</p> <p>International Health and Medical Services advised that in March 2018 Mr X was diagnosed with a mental health condition associated with his immigration situation.</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 under s 195A for the grant of a Final Departure Bridging visa, given the significant length of time he has remained in detention and the protracted nature of his removal from Australia.	

Attachment B

Name	Mr X
Ombudsman ID	1001953-03
<p>Mr X arrived in Australia by sea in December 2012 and has remained in an immigration detention facility for a cumulative period of more than five and a half years.</p> <p>In January 2013 Mr X was transferred to a Regional Processing Centre (RPC) and was returned to Immigration Detention in Australia in August 2013 for operational reasons.</p> <p>Following amendments to the Migration Regulations 1994 in December 2015, as Mr X was transferred to an RPC between 13 August 2012 and 19 July 2013 he became subject to fast track processing and therefore was not liable for return to an RPC.</p> <p>In April 2016 the Minister lifted the bars under ss 46A and 46B of the <i>Migration Act 1958</i> to allow Mr X to apply for a temporary visa.</p> <p>In September 2016 Mr X lodged an application for a Safe Haven Enterprise visa (SHEV) which was refused in April 2017. In June 2017 the Immigration Assessment Authority (IAA) affirmed the refusal.</p> <p>In June 2017 Mr X requested judicial review of the IAA decision by the Federal Circuit Court. At the time of the Department of Home Affairs' latest report, dated 29 January 2019, Mr X continued to await the outcome. A hearing has been scheduled for December 2019.</p> <p>The Department further advised that it was preparing a submission for the Minister to brief him on a number of long term detention cases, including Mr X. The submission will give the Minister an opportunity to indicate if he is willing to consider the cases on an individual basis for the grant of a bridging visa under s 195A.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for mental health concerns. IHMS further advised that Mr X displayed symptoms of detention fatigue and had been assessed to be in a severe state of distress.</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 under s 195A for the grant of a bridging visa while he awaits the finalisation of his matter with the FCC.	