

Our ref: 486N-1001148-04

16 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 six 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*.

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	Department ID	No. of People	Year of birth	Days in detention ¹	Detention status ²	Date of 486N report	Date last assessment tabled
1	1001148-O4	2	N	Mr X	64345259473	1	1983	2,373	IDF	5 April 2019	12 September 2019
2	1002200-O5	1	N	Master X	51178289492	1	2003	2,195	CD	3 May 2019	12 September 2019
3	1002201-O5	N	N	Master X	25680279790	1	2001	2,200	CD	8 May 2019	9 September 2019
4	1002534-O3	2	N	Mr X	50551335890	1	1967	1,651	IDF	1 May 2019	9 September 2019
5	1002645-O2	N	N	Mr X	62877122979	1	1958	1,468	IDF	30 April 2019	12 September 2019
6	1002656-O3	1	N	Mr X	53477314033	1	1993	1,465	IDF	7 May 2019	12 September 2019
7	1002868-O2	N	N	Mr X	92560056699	1	1987	1,096	Removed	1 April 2019	31 July 2019
8	1003090-O	N	N	Mr X	43654001480	1	1974	732	IDF	18 April 2019	First Assessment
9	1003092-O	N	N	Mr X	33204087466	1	1967	740	IDF	30 April 2019	First Assessment
10	1003095-O	N	N	Mr X	74586013590	1	1975	738	IDF	2 May 2019	First Assessment

¹ At date of the Department's latest report.

² Immigration Detention Facility (IDF), Community Placement (CD), 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	1001148-O4
<p>Mr X was detained in October 2012 following the cancellation of his Transit visa under s 116 of the <i>Migration Act 1958</i>. He has remained in an immigration detention facility for more than six and a half years.</p> <p>In December 2017 Mr X's Safe Haven Enterprise visa (SHEV) application was refused. He subsequently sought judicial review of the decision at the Federal Circuit Court (FCC).</p> <p>The Department of Home Affairs (the Department) report of 5 October 2018 advised that in June 2018 Mr X's case was found not to meet the guidelines for referral to the Minister under s 195A for a bridging visa.</p> <p>The Department's report of 5 April 2019 advised that Mr X's case was 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. The Department's report advised that Mr X's case will be regularly reviewed by Status Resolution officers.</p> <p>In March 2019 the FCC quashed Mr X's Safe Haven Enterprise visa (SHEV) refusal decision and remitted the matter to the Department for re-determination according to law.</p> <p>The Department's report advised that Mr X remains in an immigration detention facility because he 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 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 assessed against the s 195A guidelines for the grant of a bridging visa.2. The Department expedite its re-determination of Mr X's SHEV application.	

Attachment B

Name	Master X
Ombudsman ID	1002200-O5
<p>Master X was detained in April 2013 after arriving in Australia by sea with his brother and two cousins. He has remained in immigration detention, in a detention facility and the community, for more than six years.</p> <p>Master X's brother and elder cousin were granted bridging visas in October 2015 and were released from detention. Master X's cousin, Master X is the subject of Ombudsman assessment 1002201-O5.</p> <p>In September 2016 Master X's Safe Haven Enterprise visa was refused. Seven days later the Immigration Assessment Authority affirmed the refusal.</p> <p>Master X lodged an application for judicial review in the Federal Circuit Court, which was dismissed in August 2018.</p> <p>The Department of Home Affairs' (the Department) report of 29 October 2018 advised that Master X's brother voluntarily returned to Country A in July 2018.</p> <p>The Department's report of 3 May 2019 advised that Master X's migration agent lodged a request for ministerial intervention under ss 46A and 48B of the <i>Migration Act 1958</i> in February 2019 to allow Master X to lodge a second valid application for protection. The assessment of the request was ongoing at the time of the Department's report.</p> <p>The Department's report advised that Master X will not be considered for a bridging visa while he remains a minor.</p> <p>The International Health and Medical Services (IHMS) report stated that Master X did not require treatment for any major physical or 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. The Department expedite its assessment of the request for ministerial intervention under ss 46A and 48B.	

Name	Mr X
Ombudsman ID	1002534-O3
<p>Mr X was detained in October 2014 after arriving in Australia by sea and has remained in an immigration detention facility for more than four and a half years.</p> <p>Mr X arrived as a crew member and disembarked the vessel before his Maritime Crew visa application was finalised. As he did not hold a valid visa, he was detained and subsequently his application was refused.</p> <p>The Department of Home Affairs' (the Department) report of 22 October 2016 advised that Mr X is liable for transfer to a Regional Processing Country as he arrived by sea without a valid visa. The report further advised that after Mr X disembarked the vessel he requested removal from Australia and his removal was scheduled for three days later. He subsequently made protection claims and his removal was cancelled. Mr X lodged a Protection visa application in December 2014 which was invalid as he was subject to the bar under s 46A of the <i>Migration Act 1958</i>.</p> <p>The Department's report of 24 April 2017 advised that Mr X sought an injunction in the High Court in December 2016 to prevent his involuntary removal from Australia. The Department's report of 1 May 2019 advised that the case was yet to be heard.</p> <p>The Department's report of 22 October 2018 advised that in May 2018 Mr X's case was referred to the Minister for consideration under s 195A for the grant of a bridging visa. The submission also requested the s 46A bar be lifted to allow Mr X to make a valid application for protection. The Minister declined to intervene in June 2018.</p> <p>The Department's report further advised that in August 2018 Mr X's case was referred to the Minister under s 197AB for the consideration of a community placement which the Minister declined to intervene in February 2019.</p> <p>The Department's report advised that Mr X remains in an immigration detention facility because the Minister has declined to grant him a bridging visa or community placement.</p> <p>The International Health and Medical Services (IHMS) report stated that Mr X received treatment for complex physical and mental health concerns.</p> <p>IHMS advised that Mr X's detention placement was adversely affecting his health and welfare. The mental health team reported in April 2018 that his symptoms were being exacerbated by his future uncertainty and prolonged detention.</p> <p>In October 2018 the IHMS Area Medical Director supported advice that Mr X's mental state was likely to deteriorate if he remained in detention for a prolonged period.</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 also notes the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns.</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 of granting a bridging visa under s 195A.2. If Mr X is not granted a bridging visa, Mr X's case be referred to the Minister for consideration under s 197AB for the grant of a community placement.	

Attachment B

Name	Mr X
Ombudsman ID	1002656-03
<p>Mr X was detained in May 2015 on release from a correctional facility and has remained in an immigration detention facility for a cumulative period of more than four years.</p> <p>Mr X's visa was cancelled under s 501 of the <i>Migration Act 1958</i> in April 2015 following criminal charges. In June 2015 Mr X lodged a request for revocation of the cancellation of his visa.</p> <p>The Department of Home Affairs' (the Department) report of 2 May 2017 advised that Mr X was charged with rioting offences in October 2016 and was taken into criminal custody. The report further advised that Mr X's request for revocation would not be progressed until his outstanding criminal matters had been finalised.</p> <p>The Department's report of 31 October 2017 advised that in June 2017 Mr X was sentenced to 12 months imprisonment taking into consideration time already served. He was returned to an immigration detention facility in October 2017.</p> <p>The Department's report of 31 October 2018 advised that in May 2018 the Minister decided not to revoke the decision to cancel Mr X's visa. Eight days later Mr X lodged an application for judicial review in the Federal Court. The matter is scheduled to be heard in October 2019.</p> <p>The Department's report further 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.</p> <p>The International Health and Medical Services report stated that Mr X did not receive treatment for any physical or 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 for an assessment against the s 195A guidelines for the grant of a bridging visa.	