

# RESPONSE TO OMBUDSMAN'S ASSESSMENTS MADE UNDER SECTION 4860 OF THE *MIGRATION ACT 1958*

## STATEMENT TO PARLIAMENT - No. 2 / 2019

### *General Comments*

I refer to the Commonwealth Ombudsman's assessments tabled in Parliament today. The 52 assessments refer to 59 people who have been in immigration detention for two or more years. Of these, 14 assessments pertaining to 21 detainees contained recommendations.

### *Response to the Commonwealth Ombudsman's assessments*

#### **1. Tabling statement for assessment: 1002855-O.**

I note the Ombudsman's recommendations. The Department is currently preparing a submission for my consideration under section 46A of the *Migration Act 1958* (the Act), to lift the bar to allow this person to lodge a further protection visa application.

I have recently considered this person's case under section 195A of the Act for the grant of a Bridging E visa (BVE), and declined to intervene.

This person's placement was reviewed and a transfer to a facility close to this person's support network has already been facilitated by the Department.

#### **2. Tabling statement for assessment: 1000030-O2.**

I note the Ombudsman's recommendations. The Department is currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis, under my personal intervention powers granted under section 195A of the Act.

This person's current placement and needs have been carefully considered. This person is being appropriately managed in the current low-risk facility. In the event this person's case is not considered for the grant of a visa or the person's circumstances change to a point that appropriate management is not possible at the current location, alternative placement arrangements will be considered.

#### **3. Tabling statement for assessment: 1000034-O2.**

I note the Ombudsman's recommendations. I am mindful of this person's circumstances. The Department is considering refusal of their visa application under s501 of the Act. This person's application will be progressed as soon as practicable.

The Department is also currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis, under my personal intervention powers granted under section 195A of the Act.

This person is currently located in a low-risk facility designated as flexible accommodation. This person has not been referred for alternative placement as this person's current needs are being appropriately managed in the current facility. In the event this person is not granted a BVE or their circumstances change to a point, where this person is unable to be appropriately managed at the current location, alternative placement arrangements will be considered.

#### **4. Tabling statement for assessment: 1000267-O2**

I note the Ombudsman's recommendations. I am mindful of this person's circumstances. All visa applicants must be assessed to ensure they meet the character and health requirements, as well as the relevant criteria of the visa for which they have applied. This person's application is being progressed as quickly as practicable.

The Department is also currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis, under my personal intervention powers granted under section 195A of the Act.

International Health and Medical Services (IHMS) is of the view that this person requires supported living assistance where his health and medical needs can be monitored. IHMS is in the process of preparing a Tier 4 referral, as an alternative placement option.

#### **5. Tabling statement for assessment: 1000785-O2.**

I note the Ombudsman's recommendations. I am mindful of this person's circumstances. All visa applicants must be assessed to ensure they meet the character and health requirements, as well as the relevant criteria of the visa for which they have applied. This person's application is being progressed as quickly as practicable.

The Department is also currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis under my personal intervention powers, granted under section 195A of the Act.

This person's current placement and needs have been carefully considered. The person's circumstances are being appropriately managed in a low risk facility. In the event this person is not granted a BVE or their circumstances change to a point where this person is unable to be appropriately managed at the current location, alternative placement arrangements will be considered.

While a transfer for people to be close to family is preferred, a transfer for this person is not possible at this time due to capacity issues.

#### **6. Tabling statement for assessment: 1000967-O2.**

I note the Ombudsman's recommendations. The External Agency (EA) has recently reviewed this person's case. This person remains a person of interest to the EA.

The Department recognises that the issue relating to individuals subject to adverse security assessments (ASA) is complex and requires whole of government and international consultation. Whilst it is the Government's policy position that individuals who are assessed as a direct or indirect threat to national security be held in immigration detention until their status is resolved, the Department is exploring long term solutions for these individuals to be managed outside of held detention, on a case by case basis.

The Department is also currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis under my personal intervention powers, granted under section 195A of the Act.

Through various review processes such as IHMS, the Community Protection Assessment Tool and monthly Case Reviews, the Department is regularly reviewing the appropriateness of this person's placement, taking into consideration any family and other support.

## **7. Tabling statement for assessment: 1001613-O2.**

I note the Ombudsman's recommendations. All decisions to effect a return or removal are made on a case-by-case basis with regard to relevant and updated country information. This person's country of origin is currently rated by the Department of Foreign Affairs and Trade, as a "*Do not travel*" destination. The Department does not remove individuals where this would be inconsistent with Australia's *non-refoulement* obligations. Therefore, removal is not possible at this time.

As this person has been found not to engage Australia's protection obligations, the person does not qualified for third country resettlement.

The Department recognises that the issue relating to individuals subject to ASA is complex and requires whole of government and international consultation. Whilst it is the Government's policy position that individuals who are assessed as a direct or indirect threat to national security be held in immigration detention until their status is resolved, the Department is exploring long term solutions for these individuals to be managed outside of held detention, on a case by case basis.

The Department is also currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis under my personal intervention powers, granted under section 195A of the Act.

This person's placement was reviewed at the time of his transfer to the current location. Through various review processes such as IHMS, the Community Protection Assessment Tool and monthly Case Reviews, the Department is regularly reviewing the appropriateness of this person's placement, taking into consideration any family and other support.

## **8. Tabling statement for assessment: 1001818-O2.**

I note the Ombudsman's recommendations. The Department is currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis under my personal intervention powers granted under section 195A of the Act.

Considering this person's high risk rating and history of non-compliant behaviour, placement in a lower security facility is not appropriate.

## **9. Tabling statement for assessment: 1001929-O2.**

I note the Ombudsman's recommendations. The Department is currently preparing a submission for my consideration on this person's case and other similar long-term detention cases, to indicate whether I am willing to consider these cases on an individual basis under my personal intervention powers, granted under section 195A of the Act.

This person is currently located in a low security compound in a low-risk facility. In the event this person's circumstances change to a point where this person is unable to be appropriately managed at the current location, alternative placement arrangements will be considered.

**10. Tabling statement for assessment: 1002118-O2.**

I note the Ombudsman's recommendations. I am mindful of this person's circumstances. I have recently considered this person's case and refused to grant a Safe Haven Enterprise visa under section 501 of the Act, on the basis that this person has been found not to pass the character test. It is open to this person to seek judicial review of the decision to refuse their visa.

Considering this person's high risk rating and history of non-compliant behaviour, placement in a lower security facility is not appropriate.

**11. Tabling statement for assessment: 1002151-O2.**

I note the Ombudsman's recommendations. This person's visa application is currently under active consideration.

The Department recognises that the issue relating to individuals subject to ASA is complex and requires whole of government and international consultation. Whilst it is the Government's policy position that individuals who are assessed as a direct or indirect threat to national security be held in immigration detention until their status is resolved, the Department is exploring long term solutions for these individuals to be managed outside of held detention, on a case by case basis.

This person's placement has recently been reviewed. While it is preferred to place individuals as close as possible to family, a transfer for this person is not possible at this time due to operational requirements.

**12. Tabling statement for assessment: 1002248-O2.**

I note the Ombudsman's recommendations. I am mindful of this person's circumstances. The Department is considering refusal of their visa application under s501 of the Act. This person's application will be progressed as soon as practicable.

This person's current needs are being appropriately managed at the current placement. Should this person's situation change, alternative placement arrangements will be considered.

**13. Tabling statement for assessment: 1000023-O2.**

I note the Ombudsman's recommendations. This person's case has been referred for my indication as to my whether I would be inclined to intervene under section 195A of the Act, to grant this person a Humanitarian Stay (Temporary) (subclass 449) visa (HSTV) and a BVE in association with his protection visa application.

**14. Tabling statement for assessment: 1002163-O2.**

I note the Ombudsman's recommendations. This person's case has been referred for my indication as to my whether I would be inclined to intervene under section 195A of the Act, to grant this person a HSTV and a final departure BVE.

**15. Tabling statement for assessments: 1001305-O2, 1002215-O1, 1002234-O1, 1002405-O2, 1002463-O2, 1002480-O2, 1002553-O2, 1002676-O1, 1002801-O1, 1002811-O1, 1002850-O, 1002859-O, 1002867-O, 1002899-O, 1002903-O, 1002918-O, 1002932-O, 1002935-O, 2000011-O1, 1002167-O2, 1001113-O2, 1001379-O2, 1001519-O3, 1001647-O2, 1001981-O2, 1002608-O1, 1002726-O1, 1002797-O1, 1002813-O1, 1002815-O1, 1002900-O, 1002905-O, 1002906-O, 1002907-O, 1002922-O, 1002926-O, 1002928-O, 1002936-O.**

I note that the Ombudsman has made no recommendations in relation to these cases.

(Original signed by David Coleman)

THE HON DAVID COLEMAN MP  
Minister for Immigration, Citizenship and Multicultural Affairs  
11/02/2019