

Statement of Intent by the Commonwealth Ombudsman to the Minister for Immigration and Border Protection concerning assessments under section 486O of the *Migration Act 1958*

1. Section 486O of the *Migration Act 1958* (the Act) requires the Ombudsman to send to the Minister of Immigration and Border Protection an assessment of the appropriateness of the arrangements for the detention of every person who has been in immigration detention for more than two years and every six months thereafter.
2. This important oversight role helps mitigate the risk of unlawful detention or wrongful removal and ensures that the circumstances of vulnerable people, including children, are regularly reviewed and documented.
3. The purpose of this statement is to provide some explanation as to how I have gone about discharging this function. This may assist both the Minister and those reading my reports.
4. Since this function commenced on 29 June 2005, over 2000 individual assessments have been provided to the Minister, providing a regular oversight and accountability mechanism for people in long term immigration detention.
5. All cases, whether single people, family groups, children, unaccompanied minors, people in held or community detention, people located in correctional centres subject to immigration detention and people who have since left immigration detention, receive thorough consideration, analysis and review.
6. The Ombudsman bases these assessments on information provided by the Department of Immigration and Border Protection (the department) under s 486N of the Act and information from our own inquiries. After the assessment is sent to the Minister, the Minister is required to table a de-identified copy of the assessment in Parliament. An electronic version of the tabled report, together with the Minister's tabled response, is then published on the Ombudsman's website at www.ombudsman.gov.au.
7. Each person's circumstances in long term immigration detention, whether in a held facility or in community detention, is carefully reviewed and analysed with key facts and issues noted. I will note any concerns I have in my assessments, and in some cases I will provide a recommendation. In doing so my objective is to highlight the key issues concerning the health and wellbeing of the person or family, any alternatives to immigration detention, and ongoing care issues. My role does not extend to a merits review of a decision to refuse a person a visa. However, there will be occasions when I will raise matters that warrant further or closer attention by the Minister.

8. When this function commenced on 29 June 2005 there were 149 people in detention for 24 months or more, assessments were prepared in a narrative reporting style, and it was anticipated that an orderly and predictable reporting schedule would be in place in future years. However, the unanticipated significant increase of long term cases resulting from the numbers of people seeking asylum who had arrived in Australia from 2011 necessitated changes to the reporting format. In 2013 a streamlined tabular format was introduced.
9. In October 2014 I will commence reporting on a specific cohort of people in immigration detention who arrived in Australia by boat after 13 August 2012. As at September 2014, none of the people in this cohort, of which the majority are families in community detention, have had their claims for asylum processed. My reports for this cohort will be grouped by date of detention rather than on an individual basis, and my assessments will be informed by information gathered from voluntary interviews and an analysis of any health and welfare information provided by the department.
10. The Ombudsman's report to the Minister is to be provided 'as soon as practicable' after the Ombudsman receives a review from the Secretary of the department. The operation of this requirement is affected by several considerations, including whether an interview should be conducted with the person in immigration detention and whether that interview should be in person or by telephone, whether further information is required from the department, and whether there is an ongoing investigation into a complaint raised by the person or their advocate.
11. The Ombudsman's Statement to Parliament is prepared in a form that does not adversely affect the privacy of any person in detention. Personal details are de-identified. In some cases the current location of the person is also de-identified and in other cases medical and other incident details may be redacted. Once the version for Parliament has been tabled my office notifies each detainee still remaining in immigration detention that they are able to view their assessment online. They are also invited to request a translated copy of my assessment to the Minister and to contact my office to discuss their assessment or raise new concerns.
12. In 2013 a total of 709 assessments under s 486O were tabled in Parliament. This is the largest number of assessments tabled in any single year since this function commenced. An analysis of Ombudsman assessments sent to the Minister in 2013 is available from the Ombudsman's website at www.ombudsman.gov.au.



Colin Neave
Immigration and Commonwealth Ombudsman

22 September 2014