

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Ms X who has remained in immigration detention for more than 30 months (two and a half years).

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1979
<b>Ombudsman ID</b>	1002540-O
<b>Date of DIBP's reviews</b>	27 October 2016 and 27 April 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

28 October 2014	Detained under s 189(1) of the <i>Migration Act 1958</i> after being released from a correctional facility. She was transferred Facility B.
-----------------	---

### Visa applications/case progression

The Department of Immigration and Border Protection (the department) advised that Ms X arrived in Australia on 29 April 2010 at an airport on a tourist visa. She was refused entry after being arrested by the police and charged with a drug offense.	
29 July 2010	Tourist visa ceased.
6 August 2010	Granted a Criminal Justice Stay visa (CJSV).
14 January 2014	Lodged a Protection visa application with an associated bridging visa application. On 3 February 2014 the associated bridging visa application was refused.
27 October 2014	CJSV cancelled pending Ms X's release from a correctional facility.
6 November 2014	Lodged a bridging visa application. On 10 November 2014 the application was refused.
11 November 2014	Ms X was issued with a Notice of Intention to Consider Refusal of her Protection visa application under s 501. She provided a response on 9 July 2015 and 16 March 2016.
14 November 2014	Applied to the Migration Review Tribunal (MRT) for merits review. On 25 November 2014 the MRT affirmed the original decision.
23 September 2016	The department advised that Ms X was found to engage Australia's complementary protection obligations, however her Protection visa application was refused under s 501.
30 September 2016	Applied to the Administrative Appeals Tribunal (AAT) for merits review of the decision to refuse her Protection visa application. On 19 December 2016 the AAT affirmed the original decision.
10 November 2016	Ms X's case was referred on a first stage ministerial submission for consideration under ss 195A and 197AB for the grant of a bridging visa or community detention placement.

12 December 2016	The Minister agreed to consider Ms X's case on a second stage ministerial intervention submission under s 195A, but advised that he was not inclined to consider her case under s 197AB.
23 January 2017	Applied to the Federal Circuit Court (FCC) for judicial review of the AAT's decision. A hearing was scheduled for June 2017.
27 April 2017	The department advised that it was preparing a second stage ministerial submission under s 195A.

### **Criminal history**

February 2011	Ms X was sentenced to seven years and six months imprisonment, with a non-parole period of four years and six months, for a drug offence.
---------------	---

### **Health and welfare**

<p>International Health and Medical Services (IHMS) advised that Ms X was provided with treatment for an adjustment disorder with anxious and depressed mood and a history of torture and trauma. Ms X was prescribed with medication and attended regular psychological and specialist counselling. In September 2016 and January 2017 she was placed on Supportive Monitoring and Engagement observations after she disclosed thoughts of suicide and presented with acute anxiety related to her immigration status. IHMS advised that a specialist counsellor reported that Ms X's mental health was adversely impacted by situational stressors and on 27 September 2016 a psychiatrist advised that her mental health would improve if she was transferred to community detention.</p> <p>IHMS further advised that Ms X received treatment for multiple physical health concerns, including tuberculosis and difficulty swallowing. She attended a review with an ear nose and throat specialist in February 2016 and continued to be monitored for tuberculosis as per state policy.</p>	
August 2016	An Incident Report recorded that Ms X self-harmed.
September 2016	An Incident Report recorded that Ms X threatened self-harm.

### **Detention incidents**

November 2016	An Incident Report recorded that Ms X was referred to the mental health team after she was indecently assaulted by another detainee. The matter was referred to the police for investigation.
---------------	---

### Information provided by Ms X

During a telephone conversation with Ombudsman staff in August 2017 Ms X expressed concern about the uncertainty of her immigration status and advised that her application to the FCC had been successful and the court had remitted the decision to refuse her Protection visa to the AAT. She advised that she had legal representation through an advocacy service.

Ms X reported that she spoke with her case manager at least once every second month but that they had not provided her with any information. She said that the Minister was considering her for a bridging visa but she did not know why it was taking so long.

Ms X advised that she was scared to talk to the male detainees at Facility B and felt unsafe around them. She reported that she felt vulnerable being a woman in a detention centre and stated that she had been indecently assaulted by male detainees.

Ms X advised that her mental health had deteriorated over the past few weeks and she found it very hard to be in a detention centre. She advised that she worried a lot about her immigration status, her mental health and her young children in Country A. She said that her mother had recently broken her back and she was now very worried about who would be able to look after her children. Ms X advised that she attended weekly counselling which she found to be temporarily helpful, however her mental health deteriorated once she returned to the detention centre.

Ms X said that her partner and friend often visit her in detention and she talks to her children on the phone every day.

### Ombudsman assessment/recommendation

Ms X was detained on 28 October 2014 following her release from a correctional facility and has been held in an immigration detention facility for more than two and a half years.

Ms X has been found to be owed protection under the complementary protection criterion however on 23 September 2016 her Protection visa application was refused under s 501. At the time of the department's latest review Ms X was awaiting the outcome of judicial review.

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. The Ombudsman notes with serious concern advice from IHMS that Ms X received treatment for multiple mental health concerns including an adjustment disorder and a history of torture and trauma. The Ombudsman further notes advice from a psychiatrist that Ms X's mental health would improve if she was transferred to community detention.

- 1. The Ombudsman recommends that Ms X be considered under s 197AB for a community detention placement and that her mental health concerns, vulnerability in an immigration detention centre and the absence of any behavioural incidents be taken into account.**
- 2. The Ombudsman further recommends that the department expedite the possible referral of Ms X's case on a second stage ministerial submission under s 195A.**