

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O report on Ms X who has remained in immigration detention for more than 36 months (three years).

The first report 1001865 was tabled in Parliament on 4 March 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Ms X
Citizenship	Country A ¹
Year of birth	1972
Ombudsman ID	1002322
Date of DIBP's reports	16 March 2015 and 2 September 2015
Total days in detention	1,088 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001865), Ms X remained at Wickham Point Alternative Place of Detention (APOD).	
30 June 2015	Transferred to Villawood Immigration Detention Centre. Ms X's sister, Ms Y, is detained at Wickham Point APOD and is the subject of Ombudsman report 1002323.

Recent visa applications/case progression

The Ombudsman's previous report incorrectly stated that Ms X lodged an appeal with the Refugee Review Tribunal in relation to the Department of Immigration and Citizenship's decision of 20 September 2012 to refuse her application for a Bridging visa. Ms X's appeal was lodged with the Migration Review Tribunal which affirmed the refusal decision on 3 October 2012.	
14 January 2015	The Department of Immigration and Border Protection (DIBP) advised Ms X that it had commenced an International Treaties Obligations Assessment (ITOA) to determine if there were any <i>non-refoulement</i> obligations preventing DIBP from progressing her removal from Australia.
28 January 2015	Ms X provided a response to DIBP in relation to the ITOA.
13 February 2015	She sought review of the Refugee Review Tribunal's decision of 24 March 2014 by the Federal Circuit Court (FCC).
14 May 2015	FCC dismissed Ms X's application.
22 June 2015	DIBP invited Ms X to comment on information relevant to the ITOA and she provided her response the following day.

¹ On 24 November 2015 DIBP advised that the evidence before it indicates that Ms X is a citizen of Country B and as such, concurrently *de jure* a Country C citizen.

5 August 2015	DIBP decided that Ms X's circumstances do not engage Australia's <i>non-refoulement</i> obligations. The ITOA was undertaken in relation to Country B and Country C. The author of the ITOA stated that Ms X is not a citizen of Country A and has no right to enter or reside in Country A. The author further stated that he was satisfied that Ms X's claims in relation to what may happen to her if she is returned to Country A are not relevant to assessing whether Australia has <i>non-refoulement</i> obligations in relation to Country A.
27 August 2015	Sought judicial review of the FCC's decision of 14 May 2015 by the Federal Court. A directions hearing was scheduled for 29 September 2015.
28 August 2015	Sought judicial review of DIBP's ITOA decision by the FCC. A directions hearing was scheduled for 8 October 2015.
24 November 2015	DIBP advised that Ms X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ² which found that the ITOA process was procedurally unfair. DIBP further advised that it is in the process of seeking legal advice in relation to the judgment.

Health and welfare

13 May 2015	Ms X complained of difficulty sleeping and was prescribed with a short course of medication to alleviate this.
30 July 2015	She injured her ankle and was referred to a physiotherapist. International Health and Medical Services advised that the appointment was outstanding.

Recent detention incidents

3 April 2014	Ms X participated in a group protest involving refusal of food and fluid. She and the other detainees said they were protesting about their transfer from Wickham Point APOD to other immigration detention facilities.
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Other matters

On 24 April 2015 the Australian Human Rights Commission notified DIBP that Ms X's complaint, lodged in July 2014, had been finalised.	
24 November 2015	In response to an investigation opened by the Ombudsman's office in relation to Ms X's citizenship and her ITOA, DIBP confirmed that Ms X is a citizen of Country B and not Country A. DIBP further confirmed that her sister, Ms Y, is a citizen of Country A, and that it cannot make any inference on Ms X's citizenship based on Ms Y's circumstances.

² SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Ombudsman assessment/recommendation

Ms X is awaiting the outcome of her appeal by the FC in relation to the FCC's decision of 14 May 2015, and her appeal by the FCC in relation to DIBP's ITOA decision.

The Ombudsman notes that in its reviews dated 18 September 2014, 16 March 2015 and 2 September 2015 DIBP has advised that Ms X is a citizen of Country A. However, the ITOA, which was finalised in August 2015, was conducted in relation to Country B and Country C, and not to Country A.

The Ombudsman notes the importance of maintaining accurate, comprehensive, current and accessible records, particularly when these records are used to inform decisions about a person's potential removal pathway. The Ombudsman recommends that Ms X's citizenship is updated in all of DIBP's records to reflect that the evidence before DIBP indicates that she is a citizen of Country B, and not Country A.