

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

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

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| Name | Ms X |
| Citizenship | Country A |
| Year of birth | 1976 |
| Ombudsman ID | 1002410 |
| Date of DIBP's reports | 15 April 2015 and 14 October 2015 |
| Total days in detention | 961 (at date of DIBP's latest report) |

Detention history

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| 11 April 2013 | Detained under s 189(1) of the <i>Migration Act 1958</i> after she was located living and working in the community unlawfully. She was transferred to Villawood Immigration Detention Centre (IDC). |
| 11 April 2014 | Transferred to Wickham Point Alternative Place of Detention (APOD). |

Visa applications/case progression

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| 20 February 2002 | Arrived in Australia as the holder of a Tourist visa valid until 20 March 2002. |
| 21 March 2002 – 11 April 2013 | Lived unlawfully in the community. |
| 19 April 2013 | Lodged a Bridging visa application which was refused on 23 April 2013. |
| 24 April 2013 | Appealed to the Migration Review Tribunal (MRT). |
| 6 May 2013 | MRT affirmed original decision. On the same day she lodged a Protection visa application with an associated Bridging visa application. |
| 8 May 2013 | Associated Bridging visa application was deemed invalid. |
| 18 June 2013 | Lodged a Bridging visa application which was refused on 20 June 2013. |
| 21 June 2013 | Appealed to the MRT about the Bridging visa refusal made on 20 June 2013. |
| 28 June 2013 | MRT refused the appeal. |
| 31 July 2013 | Protection visa application refused. |
| 5 August 2013 | Appealed to the Refugee Review Tribunal (RRT). |
| 27 August 2013 | Lodged a Bridging visa application which was refused on 29 August 2013. |

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| 30 August 2013 | Appealed to the MRT about the Bridging visa refusal made on 29 August 2013. |
| 10 September 2013 | MRT affirmed the refusal decision. |
| 4 October 2013 | RRT affirmed the Protection visa application refusal decision. |
| 10 October 2013 | The guidelines were not met for referral to the former Minister for humanitarian consideration under s 417. |
| 24 October 2013 | Requested judicial review of the RRT decision at the Federal Circuit Court (FCC). |
| 6 November 2013 | Lodged a Bridging visa application. |
| 7 November 2013 | Bridging visa application was refused and she appealed to the MRT. |
| 18 November 2013 | MRT affirmed the refusal decision. |
| 8 January 2014 | Ms X withdrew her request for judicial review at the FCC. |
| 31 January 2014 | Requested ministerial intervention under ss 417 and 48B. |
| 18 February 2014 | Guidelines were not met for referral under s 48B. |
| 5 March 2014 | Minister declined to intervene under s 417. |
| 18 March 2014 | Ms X filed an application with the FCC seeking an injunction preventing her removal in consideration of the unintentional release of personal information through DIBP's website. ¹ |
| 21 May 2014 and 9 January 2015 | Lodged Bridging visa applications which were both refused and subsequently affirmed by the MRT (no dates provided). |
| 12 January 2015 | The Department of Immigration and Border Protection (DIBP) commenced an International Treaties Obligations Assessment (ITOA) to assess whether Ms X's case engaged Australia's <i>non-refoulement</i> obligations. |
| 20 January 2015 | Ms X filed a notice of discontinuance with the FCC. |
| 11 March 2015 | The ITOA found that Ms X's case does not engage Australia's <i>non-refoulement</i> obligations. |
| 23 March 2015 | Requested judicial review of the ITOA and/or the Post Review Protection Claims assessment at the FCC. A court date was scheduled for 16 April 2015. |
| 16 April 2015 | Judicial review at the FCC was dismissed. |
| 28 April 2015 | Requested judicial review at the Full Federal Court (FFC). |
| 4 May 2015 | Pre-hearing at FFC. |
| 17 July 2015 | Lodged a Bridging visa application which was refused on 21 July 2015. |
| 22 July 2015 | Appealed to the MRT about the Bridging visa refusal decision. |
| 31 July 2015 | MRT affirmed the Bridging visa refusal. |

¹ In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

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| 14 October 2015 | <p>DIBP advised that Ms X's matter before the FFC was adjourned to a date yet to be fixed by the FFC.</p> <p>DIBP also advised that Ms X's case is affected by the judgment handed down by the FFC² which found that the ITOA process was procedurally unfair. DIBP advised it is in the process of seeking legal advice in relation to the judgment.</p> |
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Health and welfare

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| 17 June 2013 – ongoing | <p>International Health and Medical Services (IHMS) advised that Ms X presented with anxiety and stress and was seen on a regular basis by the mental health team (MHT). She regularly attended individual and group therapy sessions.</p> <p>On 11 September 2013 she was reviewed by the psychiatrist who diagnosed her with adjustment disorder and prescribed her with antidepressant medication. IHMS advised that Ms X was placed on Supportive, Monitoring and Engagement (SME) observations on two occasions (no dates provided). It advised that she was regularly reviewed by the MHT and was noted to have impulsive behaviour and poor coping strategies.</p> |
| 15 August 2013 | <p>Ms X presented to the general practitioner (GP) with knee pain. She was prescribed with pain relief medication and referred for physiotherapy and a magnetic resonance imaging (MRI) scan.</p> |
| 16 September 2013 – 2 December 2013 | <p>Attended seven physiotherapy appointments for her ongoing knee pain.</p> |
| 27 September 2013 | <p>IHMS noted that her mental state was deteriorating. She disclosed a past history of trauma and was referred for specialist counselling.</p> |
| 28 September 2013 | <p>She was provided with pain relief medication and referred for an x-ray after presenting with hand pain as a result of hitting a wall a few days earlier. No fracture was identified.</p> |
| 7 October 2013 | <p>Reviewed by the psychiatrist who changed Ms X's medication and recommended that she be transferred to community detention.</p> |
| 15 October 2013 – 13 May 2015 | <p>Attended 27 appointments with a specialist counselling service. IHMS reported that she found the counselling beneficial.</p> |
| 5 November 2013 | <p>Ms X complained of chest pain and palpitations post exercise, and advised she had a history of heart problems when she lived in Country A. IHMS referred her for investigations which showed some abnormal results</p> |
| 22 November 2013 | <p>A DIBP Incident Report recorded that Ms X told IHMS staff that on the previous night she had self-harmed by hitting her head on the wall. She said that other detainees had supported her and she had not raised this with Serco staff. She was placed on moderate SME observations.</p> |

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

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| 23 November 2013 | During a psychiatric review Ms X disclosed that she has a history of psychiatric illness and was admitted to a psychiatric hospital for eight months when she was 15 years old. |
| 21 January 2014 | Routine blood tests returned a positive result for syphilis. The Centre for Disease Control was informed and Ms X was provided with counselling and treatment. |
| 19 February 2014 and 26 March 2014 | Attended two appointments at a cardiology clinic. It was thought that the antidepressant medication could be causing the palpitations and her prescription was changed. |
| 27 June 2014 | The MRI scan showed degenerative changes in Ms X's knee. On 11 August 2014 she was referred to an orthopaedic specialist. |
| August 2014 | Her cardiac condition was reviewed. She was referred for a chest x-ray, and on 26 August 2014 she underwent cardiac testing at a specialist service. The results were normal and no further follow up was required. |
| 3 September 2014 | Ms X hit a wall with her hand and presented with pain and swelling. She was referred for an x-ray which showed there was no fracture. Her hand was strapped and pain relief medication was provided. |
| 21 October 2014 | A DIBP Incident Report recorded that Ms X threatened self-harm during an interview with case management staff. Ms X later claimed that she had a sore knee and was in pain which had contributed to her making claims of self-harm. She was assessed by the MHT who reported no concerns. She was also taken to IHMS to have her knee assessed by the GP. |
| 2 December 2014 – 15 January 2015 | Ms X attended seven physiotherapy appointments for ongoing knee pain. IHMS advised that it had also prescribed her with pain relief medication and provided weight loss advice. |
| 22 December 2014 | IHMS reported that Ms X had thoughts of self-harm and suicidal ideation and had presented with superficial lacerations on her arms. |
| 14 May 2015 | IHMS advised that Ms X was using an elbow crutch to assist with mobility. She continued to be prescribed with pain relief medication and was awaiting a specialist appointment. |
| 10 July 2015 | Discharged from the specialist counselling service as she had not attended scheduled appointments from 13 May 2015 to 2 June 2015. |
| 13 July 2015 | Ms X reported a neck injury as the result of a fall. She was provided with treatment and referred for physiotherapy. |
| 3 August 2015 | A mental health review recorded that Ms X showed symptoms that indicated her mental health was adversely affected by her prolonged detention and that while her mental state was stable she was at risk of deterioration. |
| 12 August 2015 | Attended physiotherapy for her neck pain. IHMS advised that documentation from this appointment was pending and Ms X's neck pain was ongoing. |

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| 8 September 2015 | Attended a consultation with an orthopaedic specialist concerning her chronic knee pain. At the time of its report IHMS did not have information about the appointment. |
| 14 September 2015 | A mental health review reported that Ms X's mental health was stable but she continued to experience ongoing frustration with the detention environment and used avoidance as a coping strategy. |
| 18 September 2015 | IHMS reiterated that in August 2015 the MHT assessed that Ms X's mental health was at risk of deterioration while she remains in detention. |

Other matters

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| DIBP advised that Ms X has a Country A passport which expired on 27 September 2015. | |
| 20 August 2015 | <p>Ms X lodged a complaint with Ombudsman staff who were conducting an inspection of Wickham Point APOD. Ms X said she was not receiving adequate medical treatment from IHMS for her knee condition and was experiencing pain. She said she wanted to see a specialist and have surgery and was able to pay the medical costs herself.</p> <p>Ms X was advised to continue speaking with IHMS about her health concerns. Ombudsman staff raised the issue with IHMS and requested that IHMS speak with her about her treatment options. The complaint was not investigated and was finalised the same day.</p> |

Information provided by Ms X

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| <p>During an interview with Ombudsman staff at Wickham Point APOD on 18 June 2015 Ms X said she is the only Country A person at Wickham Point APOD and can only speak to English speakers. She said that when she was located at Villawood IDC she had friends in Sydney who visited her every day. She said she has no visitors at Wickham Point APOD and finds the detention centre staff very uncaring. But she said she does not want to return to Villawood IDC because at Wickham Point APOD she has her own room.</p> <p>Ms X said she has a partner who lives in Wollongong with whom she has been in a relationship for almost ten years. She said she does not want her partner to visit her while she is in detention, and that their future depends on the outcome of her immigration case.</p> <p>Ms X said that at Villawood IDC she witnessed self-harm attempts and fighting which had caused her a lot of distress. She sees the MHT every week and has also been seeing an external specialist counsellor for trauma counselling. She said that she thinks about suicide all the time, and has told the MHT and Serco staff about this.</p> <p>Ms X also stated that she has a problem with her knee, breathing difficulties and she frequently vomits after eating. She said she finds it difficult to walk but the medical advice is that she needs to lose weight.</p> |
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Ombudsman assessment/recommendation

Ms X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. DIBP advised that she has sought judicial review at the FFC of the ITOA and/or the Post Review Protection Claims assessment and is awaiting a hearing date.

Ms X's case is also affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP advised that it is seeking legal advice in relation to the judgment.

The Ombudsman notes with serious concern that Ms X is reported to have significant ongoing mental and physical health issues. The Ombudsman also notes that IHMS has advised that while the MHT provides regular support to her, it has assessed that she is at risk of deterioration if she remains in restricted detention.

In light of Ms X's ongoing mental health issues, if the outcome of her immigration case is likely to be further protracted, the Ombudsman recommends that consideration be given to transferring Ms X to community detention or Sydney Immigration Residential Housing while she awaits the outcome of her case.