

## 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).

|                                |                                       |
|--------------------------------|---------------------------------------|
| <b>Name</b>                    | Ms X                                  |
| <b>Citizenship</b>             | Country A                             |
| <b>Year of birth</b>           | 1962                                  |
| <b>Ombudsman ID</b>            | 1003177                               |
| <b>Date of DIBP's reports</b>  | 7 August 2015 and 25 January 2016     |
| <b>Total days in detention</b> | 912 (at date of DIBP's latest report) |

### Detention history

|               |  |
|---------------|--|
| 27 July 2013  | Ms X was released from Q Correctional Centre and detained under s 189(1) of the <i>Migration Act 1958</i> . She was transferred to Facility B. |
| 11 April 2014 | Transferred to Facility C.   |

### Visa applications/case progression

|                  |  |
|------------------|--|
| 28 August 2009   | Arrived in Australia as the holder of a Business (Short Stay) visa. On her arrival, Ms X was arrested by the Australian Federal Police (AFP) and held in criminal custody. |
| 25 August 2010   | The Commonwealth Director of Public Prosecutions lodged a Criminal Justice Stay Certificate (CJSC) application with the Attorney-General's Department.                     |
| 18 October 2010  | The Attorney General's Department declined to issue Ms X with a CJSC.  |
| 29 March 2011    | Granted a Bridging visa to regularise her status while in prison.  |
| 22 April 2013    | Lodged a Protection visa application with an associated Bridging visa application.   |
| 15 May 2013      | Attended an interview in relation to her Protection visa application.  |
| 12 June 2013     | Associated Bridging visa application refused.  |
| 9 July 2013      | Protection visa application refused.   |
| 22 July 2013     | Appealed to the Refugee Review Tribunal (RRT).   |
| 27 November 2013 | RRT remitted the matter to the Department of Immigration and Border Protection (DIBP).   |
| 23 December 2013 | Protection visa application referred for consideration under s 501.  |
| 17 April 2015    | Protection visa application refused under s 501.   |
| 22 May 2015      | Requested judicial review by the Federal Court.  |

|                 |   |
|-----------------|---|
| 26 August 2015  | The Minister withdrew from the judicial review process. On the same day a Consent Order was made setting aside the Minister's decision and the matter was remitted to the Minister for reconsideration. |
| 28 October 2015 | Ms X's Protection visa application was referred to the Visa Application Character Consideration Unit for reconsideration to refuse her visa application under s 501.                                    |

### **Criminal history**

|                 |   |
|-----------------|---|
| 28 August 2009  | Ms X was arrested by the AFP at Sydney International Airport and charged with importing marketable amounts of a border controlled drug. She was remanded in criminal custody. |
| 22 October 2010 | Ms X was convicted and sentenced to six years and eight months in prison with a non-parole period of three years and 11 months.   |

### **Health and welfare**

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|---|---|
| July 2013 – ongoing                     | International Health and Medical Services (IHMS) advised that Ms X reported that she had previously been diagnosed with an adjustment disorder, depression, anxiety and insomnia and had been prescribed with medication. She was referred to the mental health team (MHT) for counselling.   |
| 14 August 2013 – ongoing                | Ms X disclosed a history of torture and trauma and presented with physical injuries related to past abuse. IHMS advised that she was referred for specialist counselling and prescribed with antidepressant medication.   |
| 10 September 2013                       | Ms X was diagnosed with osteoarthritis after presenting with a history of lower leg swelling and she was prescribed with medication. IHMS advised that a review on 7 July 2014 reported that Ms X's condition had improved following weight loss.   |
| December 2014 – ongoing                 | Admitted to hospital for treatment of pneumonia. IHMS advised that she attended a specialist appointment in April 2015. No further information was provided.<br><br>IHMS further advised that Ms X was diagnosed with gallstones and a liver condition and was referred to a surgeon for further investigation. Her condition continues to be monitored through regular pathology testing and her GP prescribes pain relief medication as required. |
| 4 August 2014                           | Ms X underwent an ultrasound after presenting with lumps in her neck and no abnormalities were identified.  |
| 31 July 2015 –<br>2 October 2015        | Attended seven specialist counselling sessions.   |
| 12 November 2015 and<br>8 December 2015 | Attended physiotherapy for management of ongoing back pain.   |
| 22 December 2015 –<br>ongoing           | IHMS reported that Ms X's mental health continues to be monitored by the MHT and no mental health risks have been identified. She attends regular mental health assessments and was advised to self-refer as required.  |

**Other matters**

|  |   |
|--|---|
| Ms X has four children and three siblings who currently reside in Country A. |   |
| 25 January 2016  | DIBP advised that Ms X is considered a person of interest in relation to her criminal matters while in Australia. |

**Information provided by Ms X**

During a telephone conversation with Ombudsman staff on 8 January 2016 Ms X reported that her access to specialist counselling had recently ceased and she did not understand why the service was no longer available. She advised that her mental health is very poor and she believes she would benefit from further counselling.

Ms X advised that during December 2014 she had repeatedly requested to go to hospital after experiencing chronic pain and collapsing, however her requests were declined. She was subsequently admitted to hospital for six days and received treatment for pneumonia.

Ms X further reported that she had been placed on a surgical waiting list after being diagnosed with stomach and gall bladder conditions. She advised that she experiences chronic pain which has prohibited her from participating in activities and her pain relief medication is ineffective.

Ms X said that she cannot eat the food available at Facility C as it aggravates her digestive conditions. She said that she has access to produce from a vegetable garden, but would prefer regular access to healthier food.

Ms X said that she has supportive friends at Facility C, regularly attends church and participates in English classes.

**Case status**

Ms X has been found to not be owed protection under the Refugee Convention and the complementary protection criterion. She is awaiting the outcome of judicial review.