

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fourth s 486O report on Ms X¹ who has remained in immigration detention for a cumulative period of more than 42 months (three and a half years).

The first report 1001300 was tabled in Parliament on 28 May 2014, the second report 1001534 was tabled in Parliament on 25 February 2015 and the third report 1001998 was tabled in Parliament on 9 September 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Ms X
Year of birth	1981
Ombudsman ID	1003154
Date of DIBP's report	17 August 2015
Total days in detention	1,294 (at date of DIBP's report)

Recent detention history

Since the Ombudsman's previous report (1001998) Ms X remained in community detention. On 14 December 2014 she married an Australian citizen, Mr Y, and resided with him.	
9 April 2015	Ms X was granted a Bridging visa and released from community detention.
3 July 2015	The Department of Immigration and Border Protection (DIBP) advised that Ms X was re-detained under s 189(1) of the <i>Migration Act 1958</i> following criminal charges. She was transferred to Facility A.

Recent visa applications/case progression

9 April 2015	Granted a Bridging visa.
3 July 2015	Ms X's Bridging visa was cancelled under s 116 following criminal charges.
6 July 2015	Appealed to the Administrative Appeals Tribunal (AAT).
9 July 2015	DIBP notified Ms X that it had commenced an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of her case engage Australia's <i>non-refoulement</i> obligations.
14 July 2015	AAT set aside the cancellation decision. However, DIBP could not reinstate the Bridging visa because it had expired on 9 July 2015.
4 August 2015	DIBP invited Ms X to comment on country and other information relevant to the ITOA.

¹ Ms X was previously the subject of Ombudsman report 1001998 with her former husband, Mr Z, and their two sons. Mr Z and their two sons remain in community detention and are the subjects of Ombudsman report 1000897-O.

29 October 2015	Ms X's migration agent lodged a request for ministerial intervention under s 195A.
14 December 2015	Found to meet the guidelines for referral to the Minister under s 195A. DIBP advised that a submission will be prepared in due course.

Criminal matters

13 April 2015	Ms X was charged with assault of a minor.
1 July 2015	Ms X was further charged with attempting to pervert the course of justice for intimidating a witness.
21 August 2015	Ms X appeared before the P Magistrates Court.
22 December 2015	DIBP advised that since July 2015 Ms X has attended multiple court appearances and is next scheduled to appear in court on 8 February 2016.

Health and welfare

19 January 2015	International Health and Medical Services (IHMS) reported that Ms X was pregnant and referred for antenatal care. She also complained to the general practitioner (GP) of shoulder pain following a fall. An ultrasound identified inflammation and nerve impingement and she was referred to an orthopaedic specialist and for an ultrasound guided injection.
2 February 2015 – 30 March 2015	She attended seven antenatal sessions.
3 February 2015 – ongoing	Attended an appointment with an orthopaedic specialist. She was referred for a magnetic resonance imaging (MRI) scan and physiotherapy. IHMS advised that she could not attend the referrals until after she gave birth.
8 May 2015	A shoulder ultrasound identified no abnormalities.
1 July 2015	A DIBP Incident Report recorded that Ms X suffered a seizure while held at the police watch house and was taken to hospital by ambulance. No further information was provided.
8 July 2015	A neurologist reported that Ms X's test results returned normal which indicated that her seizures are unlikely true seizures and that she experiences pseudoseizures. IHMS advised that she continues to experience brief episodes of shaking without any present seizure symptoms and is monitored by the GP.
9 July 2015	A DIBP Incident Report recorded that Ms X threatened self-harm while talking with DIBP staff. No further information was provided.
13 July 2015	A DIBP Incident Report recorded that Ms X threatened self-harm to herself and her baby if she was not granted a visa. No further information was provided.

16 July 2015 – ongoing	<p>She was diagnosed with gestational diabetes. The GP reported that she was not compliant with her diet and glucose monitoring and had not attended any antenatal appointments since April 2015.</p> <p>IHMS advised that she was subsequently admitted to hospital for treatment and was assessed by the hospital's mental health team. It was identified that Ms X was experiencing auditory hallucinations and suicidal ideations with planned intent and she was transferred to a psychiatric inpatient unit for treatment. She was discharged on 23 July 2015. No further information was provided</p>
August 2015	She gave birth to her son ² without complication.
10 August 2015	Attended a postnatal appointment.
16 August 2015	The IHMS psychiatrist noted that she did not have any mental health issues.
21 August 2015	IHMS advised that Ms X was scheduled for glucose testing on 9 September 2015.
13 September 2015	A DIBP Incident Report recorded that Ms X self-harmed by wrapping a scarf around her neck. The report indicated that Serco officers used force to restrain her and she was closely monitored following the incident.

Other matters

15 June 2015	DIBP advised that an ITOA was finalised for Ms X's former husband, Mr Z, and their two sons, Master P and Master Q, with a finding that the circumstances of their case do not engage Australia's <i>non-refoulement</i> obligations.
7 July 2015	Ms X lodged a complaint with the Ombudsman's office stating that she did not want to give birth in immigration detention. She further complained that DIBP had not implemented the AAT decision which set aside the decision to cancel her Bridging visa. The complaint was investigated and closed on 3 November 2015.
14 September 2015	Mr Y lodged a complaint with the Ombudsman's office, on behalf of Ms X, alleging that she had been assaulted by a Serco officer. The complaint was investigated and closed on 8 January 2015.

² Master S was born in Australia in August 2015 and was granted Australian citizenship on 5 November 2015. DIBP advised that he is residing at Facility A with Ms X as an 'onsite visitor'.

Ombudsman assessment/recommendation

Ms X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. Her protection claims are being reassessed under an ITOA.

The Ombudsman notes that Ms X's case is affected by the Full Federal Court's (FFC) judgment of 2 September 2015,³ which found that the ITOA process undertaken by DIBP was procedurally unfair. The Ombudsman further notes that DIBP is in the process of seeking legal advice in relation to the judgment.

In December 2015 DIBP advised that it will be preparing a submission to refer Ms X's case to the Minister for him to consider granting a Bridging visa. Although this process has commenced, the Ombudsman is concerned that DIBP did not bring Ms X's case to the attention of the Minister earlier.

The Ombudsman notes that as the cancellation decision was set aside after the Bridging visa had already expired, DIBP could not reinstate the visa and release Ms X from immigration detention. However, the Ombudsman considers that at that point DIBP should have briefed the Minister about the appropriateness of Ms X's ongoing detention particularly given the apparent deterioration in her mental health and the significant impact it would have on her family.

Given that Ms X's immigration matters are likely to be protracted due to the implications of the FFC judgment, the Ombudsman recommends that DIBP refer Ms X's case to the Minister for his consideration to grant a Bridging visa and release her from immigration detention as soon as possible.

³ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.