

## 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 restricted immigration detention for more than 30 months (two and a half years).

The first report 1002599 was tabled in Parliament on 14 September 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1994
<b>Ombudsman ID</b>	1003453
<b>Date of DIBP's report</b>	23 September 2015
<b>Total days in detention</b>	914 (at date of DIBP's latest report)

### Detention history

Following Ms X's arrival on the Australian mainland on 23 March 2013, she was detained at Darwin Airport Lodge Alternative Place of Detention (APOD).	
8 May 2013	Transferred to Wickham Point Immigration Detention Centre.
22 May 2013	Transferred to Wickham Point APOD.
26 June 2014	Transferred to Bladin APOD.
26 February 2015	Transferred to Facility B.

### Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) omitted to advise that Ms X had arrived on the Australian mainland in its first review of her case.  DIBP's review dated 23 September 2015 confirmed that as Ms X arrived in Australia as a 'direct entry person' <sup>1</sup> she is not barred under s 46A of the <i>Migration Act 1958</i> from lodging a protection visa application.  DIBP further advised that following legislative amendment, Ms X is only eligible for a temporary visa.	
6 September 2013	Lodged a Protection visa application.
12 March 2014	Ms X was issued with a letter inviting her to comment on the unintentional release of personal information through DIBP's website. <sup>2</sup>
12 August 2014	Interview conducted in relation to Protection visa application.
26 September 2014	Protection visa application refused.

<sup>1</sup> A maritime arrival to Australia's mainland who is seeking protection.

<sup>2</sup> 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.

2 October 2014	Appealed to the Refugee Review Tribunal (RRT).
19 November 2014	RRT affirmed original decision.
24 November 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
19 December 2014	Appealed to the Federal Circuit Court (FCC).
15 April 2015	The FCC heard and adjourned Ms X's appeal. This matter remains ongoing.
23 September 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) <sup>3</sup> which found that the International Treaties Obligations Assessment 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**

International Health and Medical Services advised that Ms X has not required treatment for any major physical or mental health issues since its previous report to the Ombudsman.	
8 May 2015	Ms X was removed from the tuberculosis register following the completion of her treatment. Her condition is monitored by her general practitioner.

### **Other matters**

5 November 2015	Ms X's advocate contacted the Ombudsman's office about the effect restricted detention is having on Ms X's mental health after a period of over two and a half years. The advocate expressed concern about Ms X's apparent vulnerability and age and her ongoing placement in restricted detention.
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<sup>3</sup> SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

### **Information provided by Ms X**

During a telephone conversation with Ombudsman staff on 27 November 2015 Ms X advised that she was told by her case manager that she is still in restricted immigration detention because she has judicial review proceedings underway. She said she was also told by DIBP that she cannot be transferred to the community because of her legal proceedings with the FCC and because her application for a Protection visa was refused. Ms X said that in October 2014 she signed a Code of Behaviour<sup>4</sup> but she had not been updated on her case progression.

Ms X said that she cannot understand why she is still in restricted detention and she feels very isolated because other detainees do not speak to her. She said that she believes this is because they think she must have done something wrong to remain in a restricted detention facility for so long.

Ms X said that when she is not taking part in activities she stays in her room. She said that she has no physical health problems and while she is very worried about her situation she has not spoken with the IHMS mental health team and she does not know who she can trust.

### **Ombudsman assessment/recommendation**

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

Ms X's case is also affected by the FCC'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 concern that DIBP's 24 month s 486N review of Ms X's case failed to provide details of her arrival on the Australian mainland as a 'direct entry person' and subsequent visa progression. The Ombudsman notes the importance of maintaining accurate and comprehensive records relating to a person's detention circumstances, particularly when these records are used to inform decisions about an individual's detention placement and immigration status.

Furthermore, the Ombudsman relies on the accuracy of information provided by DIBP to enable an Ombudsman assessment of the appropriateness of the immigration detention arrangements for a person who has been detained for more than two years.

Given that DIBP has not provided any information as to why Ms X has not been considered for transfer to the community the Ombudsman recommends that consideration be given to reviewing Ms X's detention placement or to grant her a Bridging visa while she awaits the outcome of her appeal to the FCC.

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<sup>4</sup> Since 14 December 2013 all adult maritime arrivals must sign a Code of Behaviour before they can be considered for the grant of a Bridging visa. The Code of Behaviour was introduced to help ensure that maritime arrivals living in the community on Bridging visas are aware of community behavioural expectations and behave appropriately while in the Australian community.