

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Ms X who has remained in 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>	1969
<b>Ombudsman ID</b>	1002636-O
<b>Date of DIBP's reports</b>	31 March 2017 and 29 September 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

1 April 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following her release from a correctional facility. She was transferred to Facility B.
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### Visa applications/case progression

<p>Ms X arrived in Australia on 25 February 2006 on a tourist visa, valid until 20 February 2007, and was granted further tourists visas in March and August 2008.</p> <p>On 19 January 2009 Ms X was granted a student guardian visa, valid until 17 March 2011. On 7 March 2011 she was granted a bridging visa in association with her son's school sector visa application and on 20 April 2011 she was granted a further student guardian visa.</p>	
8 July 2013	Student guardian visa cancelled under s 140 following criminal charges.
26 March 2015	Issued with a Criminal Justice Stay Certificate (CJSC).
30 March 2015	The Department of Immigration and Border Protection (the department) refused to grant Ms X a Criminal Justice Stay visa.
2 July 2015	Lodged a Protection visa application with an associated bridging visa application.
6 July 2015	Associated bridging visa application refused.
8 July 2015	Applied to the Administrative Appeals Tribunal (AAT) for merits review of the department's decision to refuse her bridging visa application. Ms X withdrew the application on 16 July 2015.
11 August 2015	CJSC was cancelled.
11 September 2015	Protection visa application refused.
16 September 2015	Applied to the AAT for merits review of the decision to refuse her Protection visa application.
23 December 2015	Lodged a bridging visa application.
12 January 2016	AAT remitted the refusal of Ms X's Protection visa application to the department with the direction that there are substantial grounds for believing that as a necessary and foreseeable consequence of Ms X being removed from Australia, there is a real risk that she will suffer significant harm.

17 March 2016	Bridging visa application refused under s 501.
30 March 2016	Applied to the AAT for merits review of the decision to refuse her bridging visa application under s 501. The AAT affirmed the original decision on 10 June 2016.
16 June 2016	Issued with a Notice of Intention to Consider Refusal (NOICR) of her Protection visa application under s 501.
13 October 2016	Protection visa application refused under s 501.
21 October 2016	Applied to the AAT for merits review.
9 January 2017	AAT set aside the department's decision.
14 February 2017	The Minister requested that the department prepare a submission under s 501 for his consideration to set aside the AAT's decision and refuse Ms X's Protection visa application if he is satisfied that she does not pass the character test and it is in the national interest to do so.
9 March 2017	Issued with a second NOICR of her Protection visa application under s 501. Ms X provided a response on 6 April 2017.
24 July 2017	Ms X's case was referred to the Minister for his consideration under s 501.
29 September 2017	The department advised that the Minister was considering ministerial intervention under s 501 to set aside and substitute the AAT's decision.

### Criminal history

August 2014	Convicted of five drug related offences and sentenced to four years and three months imprisonment with a non-parole period of two years and three months. She was also ordered to pay \$14,020 in compensation.
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### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X was admitted to hospital on 24 December 2015 after she self-harmed by overdosing on medication. She was placed on Supportive Monitoring and Engagement observations until 7 January 2016 and attended psychological counselling. In March 2016 she was closely monitored by Serco officers after expressing suicidal thoughts related to her immigration pathway.</p> <p>In October 2016 Ms X was diagnosed with depression, anxiety and post-traumatic stress disorder (PTSD) and presented with difficulty sleeping related to stress. She was prescribed with medication and referred for counselling. In April 2017 a psychiatrist noted that counselling had been beneficial for Ms X's mental health and recommended that she continue to attend. In July 2017 a counsellor noted that she was experiencing situational anxiety and detention fatigue.</p> <p>IHMS further advised that Ms X was provided with treatment for chest, shoulder and knee pain. She underwent investigative testing for chest pain in April 2017 and a general practitioner advised that the pain was due to increased stress.</p>	
23 December 2015	An Incident Report recorded that Ms X threatened self-harm during a conversation with her migration agent and was referred to the mental health team for assessment.
24 December 2015	An Incident Report recorded that Ms X was transferred to hospital by ambulance following an incident of self-harm.

23 March 2016	An Incident Report recorded that Ms X threatened self-harm during a meeting with her case manager and was closely monitored by Serco officers.
15 March 2017	An Incident Report recorded that Ms X threatened self-harm and was closely monitored by Serco officers.
28 March 2017	An Incident Report recorded that Ms X refused food and fluid.

**Other matters**

Ms X's son resides in the community on a spouse visa and Ms X's granddaughter is an Australian citizen.

**Information provided by Ms X**

During an interview with Ombudsman staff on 20 June 2017 Ms X advised that her Protection visa application had been refused, but when the AAT reviewed her case they found that she was owed protection. She said that her lawyer would write to the Minister seeking natural justice.

Ms X advised that her son and granddaughter reside in the community and visit her every week. She said that she would like to be allowed to visit them at home and has lodged numerous requests with Serco, but they have not been acknowledged.

Ms X stated that she suffers from dizziness and often cries and feels sad. She said that her doctor had recently increased her medication to help her relax and stop thinking about the past. She also advised that IHMS counselling was helpful.

Ms X reported that it is very noisy in her compound and this makes it difficult for her to sleep. She said that she asked Serco to move her into a different compound, but this had not occurred.

**Ombudsman assessment**

Ms X was detained on 1 April 2015 following her release from a correctional facility and has remained in an immigration detention facility for more than two and a half years.

Ms X's Protection visa application was refused under s 501 on 13 October 2016 and on 9 January 2017 the AAT set aside the department's decision. At the time of the department's latest report, the Minister was considering ministerial intervention under s 501 to set aside and substitute the AAT's decision.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose. IHMS has advised that Ms X received treatment for depression, anxiety and PTSD and was experiencing situational anxiety and detention fatigue. Incident Reports also recorded that Ms X self-harmed or threatened self-harm on multiple occasions during this assessment period.