

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O assessment on Ms X who has remained in immigration detention for more than 36 months (three years). The previous assessment 1002540-O was tabled in Parliament on 18 October 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Ms X
Citizenship	Country A
Year of birth	1979
Ombudsman ID	1002540-O1
Date of department's report	26 October 2017
Total days in detention	1,094 (at date of department's report)

Recent detention history

Since the Ombudsman's previous assessment, Ms X has remained at Facility B.

Recent visa applications/case progression

February 2017	Ms X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. In March 2017 the submission was returned to the Department of Home Affairs (the department) unactioned.
June 2017	The Federal Court (FC) remitted Ms X's Protection visa application to the Administrative Appeals Tribunal (AAT) for reconsideration after finding that the AAT decision was affected by jurisdictional error. A directions hearing was conducted by the AAT in September 2017.
October 2017	The department advised that Ms X's case had been identified for an assessment against the guidelines under s 197AB for a community placement. The department further advised that Ms X's case will not be referred to the Minister under ss 195A or 197AB until the outcome of the AAT's review is finalised.

Health and welfare

International Health and Medical Services (IHMS) advised that Ms X continued to receive treatment for an adjustment disorder with anxious and depressed mood and a history of torture and trauma. She was regularly reviewed by a psychiatrist and her prescribed medication was frequently adjusted. In April 2017 a specialist counsellor advised that Ms X's mental health would improve if she was placed in a safe and secure environment in the community. In August 2017 a psychiatrist noted that Ms X experiences ongoing anxiety and depression related to her prolonged detention and inability to care for her children. The psychiatrist also advised that Ms X's mental health would improve if she was placed in the community.

IHMS further advised that Ms X continued to be monitored for latent tuberculosis and was reviewed at a chest clinic in August 2017. She also presented with abdominal pain and a specialist advised that her symptoms may be related to stress.

Other matters

20 February 2018	Ms X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to her prolonged detention. The matter was investigated and the complaint was finalised on 22 February 2018.
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Ombudsman assessment/recommendation

Ms X was detained on 28 October 2014 following her release from a correctional facility and has been held in an immigration detention facility for more than three years.

Ms X has been found to be owed protection under the complementary protection criterion, however on in September 2016 her Protection visa application was refused under s 501 following criminal convictions. The AAT affirmed this decision in December 2016.

In June 2017 the FC remitted Ms X's Protection visa application to the AAT for reconsideration after finding that the AAT decision was affected by jurisdictional error.

In October 2017 the department advised that Ms X's case had been identified for an assessment against the guidelines under s 197AB for a community placement.

The Ombudsman's previous assessment recommended that Ms X be considered under s 197AB for a community detention placement and that the department expedite the possible referral of Ms X's case on a second stage ministerial submission under s 195A.

On 18 October 2017 the Minister advised that Ms X's case had been identified for an assessment against the guidelines under s 197AB and that her case would not be referred to him under ss 195A or 197AB until the reconsideration of her case by the AAT is finalised.

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 reported that both a specialist counsellor and psychiatrist have advised that Ms X's mental health would improve if she was placed in the community.

In light of Ms X's mental health concerns and the absence of any recent behavioural concerns, the Ombudsman recommends that the department expedite the assessment of Ms X's case against the guidelines under s 197AB for a community placement once the reconsideration of her Protection visa application has been finalised.