

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O report on Ms X who has remained in restricted immigration detention for more than 36 months (three years).

The first report 1002599 was tabled in Parliament on 14 September 2015 and the second report 1003453 was tabled in Parliament on 2 March 2016. This report updates the material in those report and should be read in conjunction with the previous reports.

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| Name | Ms X |
| Citizenship | Country A |
| Year of birth | 1994 |
| Ombudsman ID | 1001428-O |
| Date of DIBP's report | 22 March 2016 |
| Total days in detention | 1095 (at date of DIBP's report) |

Recent detention history

Since the Ombudsman's previous report (1003453), Ms X has remained at Wickham Point Alternative Place of Detention (APOD).

Recent visa applications/case progression

In Ms X's 30 month review, dated 23 September 2015, the Department of Immigration and Border Protection (DIBP) advised that Ms X's case was affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC)¹ in connection with International Treaties Obligations Assessments (ITOA).

On 9 February 2016 DIBP advised the Ombudsman's office that this statement was incorrect. Ms X was not subject to an ITOA as her protection claims arising from the data breach were considered by the Refugee Review Tribunal together with her general protection claims.

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| 15 April 2015 | The Federal Circuit Court (FCC) heard Ms X's application for judicial review of the decision to refuse her Protection visa and reserved judgment. |
| 22 February 2016 | Ms X's case was identified for referral on a ministerial submission for consideration under s 197AB of the <i>Migration Act 1958</i> for a community detention placement. |

Health and welfare

International Health and Medical Services (IHMS) advised that Ms X has not required treatment for any major physical or mental health issues since its previous report to the Ombudsman.

¹ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

Other matters

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| 4 March 2016 | <p>The Ombudsman's office opened an investigation into the circumstances of Ms X's ongoing restricted detention.</p> <p>On 5 April 2016 DIBP confirmed that a community detention referral was initiated for Ms X on 3 March 2016 and the investigation was finalised.</p> |
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Information provided by Ms X

During an interview with Ombudsman staff at Wickham Point APOD on 20 April 2016 Ms X advised she does not go on excursions anymore because it makes her feel sad when she has to return to detention. The only time she leaves Wickham Point APOD is to attend a Catholic church service once a month, although she would like to be able to go to church more often.

Ms X said she feels like she will go crazy if she continues to remain in detention, but she does not like to talk to IHMS about her mental health because she is uncomfortable with the questions they ask her.

Ms X said her case manager had told her that she was not eligible for a Bridging visa or community detention placement because her Protection visa application was refused. She said she has not done anything wrong and does not understand why she has been in detention for so long.

Ombudsman assessment/recommendation

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

The Ombudsman's previous report (1003453), tabled in Parliament on 2 March 2016 recommended that Ms X be considered for a Bridging visa or community detention placement while she awaits the outcome of her appeal to the FCC.

The Minister noted the Ombudsman's recommendation and advised that Ms X has been found not to be owed protection and has not presented with any vulnerabilities that would suggest a need for an alternative placement.

The Ombudsman notes that Ms X has remained in restricted immigration detention for more than three years since arriving in Australia without family members at the age of 18.

The Ombudsman notes that on 3 March 2016 Ms X's case was referred for consideration of inclusion on a ministerial submission for consideration of a community detention placement. The Ombudsman recommends that the process of considering Ms X for a community detention placement be expedited.