

**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 a cumulative period of more than 48 months (four years).

The first report 1003177 was tabled in Parliament on 31 August 2016. 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>	1962
<b>Ombudsman ID</b>	1001933-O
<b>Date of DIBP's reports</b>	27 July 2016 <sup>1</sup> and 28 September 2016
<b>Total days in detention</b>	1640 (at date of DIBP's latest report)

**Recent detention history**

Since the Ombudsman's previous report (1003177), Ms X remained at Facility B.	
4 May 2016	Transferred to Facility C.

**Recent visa applications/case progression**

13 November 2015	The Department of Immigration and Border Protection notified Ms X that her case was being reconsidered and provided 28 days for her to comment. This followed the Federal Court's (FC) remittal of her Protection visa application for reconsideration on 26 August 2015 when Ms X's judicial review proceedings were settled.
6 September 2016	The Minister refused Ms X's Protection visa application under s 501 of the <i>Migration Act 1958</i> . As the Minister made the decision personally, there is no legislative provision for merits review of this decision by a tribunal.

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<sup>1</sup> DIBP advised that it did not meet its statutory obligations in relation to providing Ms X's 24, 30, 36, 42 and 48 month reviews on time under s 486N. DIBP explained that it had miscalculated the days in detention reported in her 24 and 30 month reviews. This was because, as the result of an administrative error, a period of time (3 December 2009 to 29 March 2011, 481 days) that Ms X spent in a correctional centre in immigration detention was not recorded as such in departmental systems. DIBP stated that its Statutory Reporting in Detention section had requested that Ms X's records be corrected to accurately reflect the time she had spent in detention.

## Health and welfare

International Health and Medical Services (IHMS) advised that Ms X had a long history of mental health issues including torture and trauma, adjustment disorder, depression, anxiety and insomnia. IHMS advised she was attending regular mental health counselling and was compliant with medication.

On 21 July 2016 her psychiatrist stated her mental health state was deteriorating due to prolonged detention and uncertainty about her future, and recommended transfer to community detention. However, in the most recent psychological review her mental state was reported to have improved.

Ms X also attended specialist counselling for torture and trauma until September 2016 when she stated she no longer wished to continue with this counselling.

IHMS further advised that Ms X received treatment for physical conditions including high blood pressure, chronic lower back pain, arthritic shoulder pain, foot pain, knee pain and haematuria. In March 2016 she underwent gall bladder surgery.

## Ombudsman assessment/recommendation

Ms X has been found to be owed protection under the Refugee Convention and has been in restricted immigration detention for more than four and a half years.

The Ombudsman notes that Ms X was sentenced to six years and eight months imprisonment with a non-parole period of three years and 11 months for a drug importation offence.

The Ombudsman notes that on 6 September 2016 the Minister refused Ms X's application for a Protection visa under s 501 following remittal of the matter by the FC.

The Ombudsman notes that Ms X has been found to be owed protection and removal would breach Australia's non-refoulement obligations.

Notwithstanding Ms X's criminal history, the Ombudsman remains concerned about the risk that an indeterminate period of detention poses to her mental and physical health.

The Ombudsman recommends that options be explored for a solution to what appears to be a situation of indefinite detention for Ms X.

The Ombudsman notes that s 486N(1)(b) records the Secretary of DIBP's obligation to report to the Commonwealth Ombudsman within 21 days after the detention reporting time.

In the case of DIBP's 24-month review on Ms X and the following four reviews, the Ombudsman notes with concern that DIBP advised that it did not meet its statutory reporting timeframe due to an administrative error.

The Ombudsman further notes DIBP advised that its records on Ms X were to be corrected to accurately reflect her time spent in detention.