

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Ms X who has remained in restricted immigration detention for more than 24 months (two years).

Name	Ms X
Citizenship	Country A
Year of birth	1983
Ombudsman ID	1003474
Date of DIBP's report	2 October 2015
Total days in detention	730 (at date of DIBP's report)

Previous detention history

25 May 2010	Ms X was detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community and transferred to Maribyrnong Immigration Detention Centre (IDC).
2 June 2010	Voluntarily removed from Australia to Country A.

Detention history

10 October 2013	Ms X was detained under s 189(1) after living unlawfully in the community and transferred to Perth IDC.
28 April 2014	Transferred to Wickham Point Alternative Place of Detention.

Visa applications/case progression

17 October 2006	Arrived in Australia as the holder of an Electronic Travel Authority (ETA) (Visitor) visa valid until 17 January 2007 using another identity.
2 June 2010	Voluntarily removed from Australia to Country A.
7 February 2012	Re-entered Australia on an ETA (Visitor) visa valid until 7 February 2013 using the name Ms X.
7 February 2013	Lodged a Protection visa application with an associated Bridging visa application. On the same day Ms X was granted an associated Bridging visa valid until 19 July 2013.
21 March 2013	Protection visa application refused.
23 April 2013	Appealed to the Refugee Review Tribunal (RRT).
12 June 2013	RRT affirmed original decision.
13 June 2013	Found not to meet the guidelines for referral to the former Minister under s 417.
20 July 2013 – 10 October 2013	Remained in the community unlawfully following the expiry of her Bridging visa.

10 October 2013	Ms X voluntarily surrendered to the Department of Immigration and Border Protection (DIBP) and was re-detained under s 189(1).
19 November 2013	Lodged a Protection visa application with an associated Bridging visa application. DIBP advised that she was listed as a dependant on the application of her claimed de facto spouse, Mr Y.
25 November 2013	Associated Bridging visa application deemed invalid.
28 January 2014	Lodged a Bridging visa application.
30 January 2014	Bridging visa application refused.
10 March 2014	Lodged a Bridging visa application.
12 March 2014	Bridging visa application refused. On the same day Ms X was notified of the unintentional release of personal information through DIBP's website. ¹
17 March 2014	Protection visa application refused.
27 March 2014	Appealed to the RRT.
2 July 2014	RRT affirmed original decision.
17 December 2014	Lodged an application for an injunction preventing removal from Australia with the Federal Circuit Court (FCC).
16 January 2015	Ms X was issued with a letter notifying her of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of her case engage Australia's <i>non-refoulement</i> obligations.
20 January 2015	Ms X withdrew her application for an injunction with the FCC.
10 February 2015	Ms X provided a response to DIBP relating to the ITOA.
18 May 2015	DIBP invited Ms X to comment on further information relating to the ITOA.
25 June 2015	Found not to be owed protection.
29 June 2015	Requested judicial review by the FCC.
2 October 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) ² which found that the ITOA process was procedurally unfair. DIBP further advised that it is reviewing how this judgment will affect protection obligation processes.

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

Health and welfare

October 2013 – ongoing	International Health and Medical Services (IHMS) advised that during her induction health assessment Ms X reported to have been diagnosed with hyperthyroidism. She was prescribed with medication and her thyroid levels were monitored. IHMS advised that at the time of its report Ms X did not require medication for her condition.
28 October 2014	Prescribed with medication to assist with sleeping difficulties.

Other matters

Ms X is the holder of a Country A passport valid until 2017.

Case status

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.

Ms X's case is also affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP has advised that it is reviewing how this judgment will affect protection obligation processes.