

## 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 Mr X who has remained in restricted immigration detention for a cumulative period of more than 42 months (three and a half years).

The first report 1002001 was tabled in Parliament on 3 June 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1966
<b>Ombudsman ID</b>	1002499
<b>Date of DIBP's reports</b>	15 May 2015, 9 November 2015 and 11 May 2016
<b>Total days in detention</b>	1280 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1002001), Mr X has remained at Facility B.

### Recent visa applications/case progression

17 April 2015	The former Assistant Minister refused Mr X's application for a Protection visa under s 501(1) of the <i>Migration Act 1958</i> .
28 April 2015	The Department of Immigration and Border Protection (DIBP) notified Mr X of the Protection visa refusal.
16 June 2015	Mr X was identified for assessment against the guidelines under s 195A for referral to the Minister for consideration of a Bridging visa.
24 September 2015	DIBP advised that Mr X's case was potentially affected by the Federal Court (FC) matter of 26 August 2015 <sup>1</sup> which ordered that the decision of the former Assistant Minister be quashed and re-determined according to law.  DIBP further advised that the s 195A referral to the Minister was not progressed.
23 November 2015	DIBP advised Mr X it had identified that his case was affected by a legal error. The former Assistant Minister had been bound to consider the legal consequences of the refusal decision including in particular the effect of s 197C. DIBP said this did not occur in Mr X's case. As a result the Assistant Minister's refusal decision was to be treated as having no legal effect and Mr X's Protection visa application remained valid.  On the same day DIBP issued Mr X with a Notice of Intention to Consider Refusal (NOICR) of his Protection visa application under s 501 and invited Mr X to comment.

<sup>1</sup> *AZO15 v Minister for Immigration and Border Protection*.

21 January 2016	Mr X provided a response to the NOICR.
11 May 2016	DIBP advised that consideration of whether Mr X's Protection visa application should be refused under s 501 remained ongoing.

**Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment and monitoring for a range of physical health issues including Condition C, Condition D, and high blood pressure and cholesterol.

IHMS advised that Mr X was diagnosed in May 2015 with a major depressive disorder. IHMS reported that he was prescribed antidepressant medication for a period of time, and in March 2016 presented to the general practitioner with some sleeping problems but no symptoms of depression.

**Other matters**

15 November 2013	Mr X was identified as a person of interest to DIBP's National Security and Serious Crimes Reporting Team due to his criminal conviction.
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**Case status**

Mr X has been in restricted detention for a cumulative period of more than three and a half years.

DIBP advised that Mr X's case was affected by legal error and it is giving fresh consideration to whether his Protection visa application should be refused under s 501.