

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 295/07*

## Case overview

1. Mr X is aged 34 and is a citizen of the United Kingdom. His parents, brother, wife and children live in Australia.
2. Mr X arrived in Australia as a permanent resident in July 1974 when he was 18 months old. In July 2001 his Transitional (Permanent) Visa was cancelled under s 501(2) of the *Migration Act 1958* on character grounds. In July 2003 he was detained under s 189(1) following the completion of his correctional sentence. At Mr X's request, his immigration detention continued on from his correctional sentence at a state correctional facility. In June 2005 he was placed in an alternative detention arrangement and was allowed to live with his family. Mr X was released from detention in August 2005, after the Department (DIAC) determined that he was subject to the Full Federal Court (FFC) decision, *Nystrom and MIMIA [2005]*.
3. On 15 June 2007 Mr X was granted a Resident Return Visa (RRV).

## Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N is dated 28 July 2005.
5. Ombudsman staff interviewed Mr X and his wife by telephone in February and March 2006.
6. Ombudsman staff sighted a number of documents: various case notes from the RCC, and a letter from DIAC to the Ombudsman's office, dated 22 June 2007, on the outcome of a review of Mr X's case in response to the Ombudsman's report on long-term residents whose visas had been cancelled under s 501 of the Migration Act<sup>1</sup>.

## Key issues

### *Immigration detention in a state correctional facility*

7. At the interview with Ombudsman staff Mr X expressed frustration that, during his period of immigration detention in the correctional facility, he was upgraded to maximum security. This restricted his movement and also the length of time his family was allowed to visit him each week.
8. The Migration Series Instruction (MSI) 244 notes that prisons are considered unsuitable institutions in which to place an immigration detainee, however, if no immigration detention centre exists in the state it is considered appropriate to house the detainee in 'an appropriate lower security prison'. Mr X asked to stay at the correctional facility to remain close to his family.
9. The Ombudsman published an own motion report in 2001 into immigration detainees held in state correctional facilities and noted that some detainees 'are being assigned an inappropriate level of security classification at least partly due to advice provided to

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<sup>1</sup> *'Administration of s 501 of the Migration Act 1958 as it applies to long-term residents'*, February 2006, Report by the Commonwealth and Immigration Ombudsman, Prof. John McMillan, Report No. 01/2006, Commonwealth Ombudsman, Canberra, Australia.

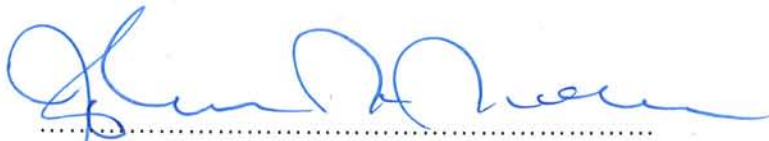
prison officials by DIMA<sup>2</sup>. The Ombudsman noted concerns in Report 43/06 about immigration detainees held in a state correctional facility. Issues pertaining to Mr X have not been raised directly with DIAC but are included for the sake of completeness.

*s 501 Case Review*

10. Mr X was identified by DIAC as a client who met the criteria for inclusion in the s 501 Case Review following its agreement to the Ombudsman's proposal at Recommendation 8 of the above mentioned report. DIAC advises that as part of the review, it assessed Mr X as holding an absorbed person visa by operation of s 34 at the time his visa was cancelled. The Minister intervened in June 2007 under s 195A and granted Mr X a substantive RRV.

**Ombudsman assessment/recommendation**

11. The Ombudsman notes that Mr X is now the holder of a RRV and makes no recommendations in this report.



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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

19 November 2007  
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Date

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<sup>2</sup> *'Report of an own motion investigation into immigration detainees held in state correctional facilities'*, Report under section 35A of the *Ombudsman Act 1976*, March 2001, pg 21, Commonwealth Ombudsman, Canberra, Australia.