

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 19 FEBRUARY 2008

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(3) Output: Portfolio Tribunals (MRT-RRT)

Senator Barnett (L&CA 8) asked:

Can you provide an example of case law?

Answer:

An example of case law in the area of sexuality is *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* and *Appellant S396/2002 v Minister for Immigration and Multicultural Affairs* [2003] HCA 71; 216 CLR 473; 203 ALR 112; 78 ALJR 180 (see Attachment 1). The Tribunal found that the applicants were homosexual men and that homosexual men in Bangladesh were a particular social group for the purposes of the Refugees Convention. However, the Tribunal found that the applicants had not suffered serious harm by reason of their homosexuality and would not do so on return to Bangladesh if they continued to act discreetly. The Tribunal's decision was upheld by the Federal Court. On appeal, a majority of the High Court held that the Tribunal was in error to the extent that the Tribunal placed reliance on the applicants acting discreetly. This diverted the Tribunal from the fundamental question of whether there was a well-founded fear of persecution.