

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.3 SID

Question No. 109

Senator Wright asked the following question at the hearing on 14 February 2012:

Legal aid funding for refugee cases of judicial review

1. Following the decision of the High Court in November 2010¹, which held that offshore asylum seekers hold the right to exercise judicial review, what additional funding has been provided to Legal Aid Commissions and/or Community Legal Centres to meet the growing demand for legal representation?
2. How will the Government respond to the increasing demand for legal representation by both onshore and offshore asylum seekers seeking judicial review?
3. What is the timeline for such a response?
4. What, if any, cost benefit analysis has the Government undertaken relating to the allocation of funds to Legal Aid Commissions?

1. *Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia* [2010] HCA 41.

The answer to the honourable senator's question is as follows:

1. Legal assistance providers are managing the provision of services to people seeking legal assistance in judicial review matters within existing budgets. The Government is providing over \$1.3 billion over four years to legal assistance services. This includes an injection in 2010-11 of \$154 million over four years to 2014-15. The additional funding includes \$92.3 million over four years for legal aid and \$26.8 million over four years for community legal services.

Under the National Partnership Agreement on Legal Assistance Services, the Commonwealth funds legal aid commissions to provide legal assistance for Commonwealth legal aid service priorities. Legal aid commissions set guidelines and a means and merits test and determine individual grants of aid. Migration matters where assistance is not available from services funded by the Department of Immigration and Citizenship is a Commonwealth legal aid service priority. The Government through Community Legal Services Program provides funding to refugee and immigration community legal centres such as Refugee and Immigration Legal Service in Queensland and the Centre for Advocacy, Support and Education for Refugees (CASE) in Western Australia. Legal advice for migration matters is one of many demands on legal assistance service providers. Legal assistance service providers must balance these demands as part of managing their budgets.

2. Legal aid commissions have reported increased applications for legal assistance for judicial review in migration matters. The Department continues to consult with the Department of Immigration and Citizenship, the legal aid commissions and the Courts about managing the migration judicial review workload.

3. Assistance in these matters is monitored through existing reporting arrangements the Department has in place with legal assistance services. This includes twice yearly performance

discussions with legal aid commissions under the National Partnership Agreement on Legal Assistance Services. There is no timeline for action beyond these arrangements.

4. The Government has not undertaken a cost benefit analysis relating to the allocation of funds to legal aid commissions. The National Partnership Agreement on Legal Assistance Services is due to be reviewed by 30 June 2013. Under the review arrangements for this Agreement all Commonwealth-funded legal services are set to be reviewed to ensure they are delivering the most cost-effective legal assistance services to those most in need. That review is currently underway.