

## **QUESTION TAKEN ON NOTICE**

### **BUDGET ESTIMATES HEARING: 27-28 May 2013**

#### **IMMIGRATION AND CITIZENSHIP PORTFOLIO**

#### **(BE13/0418) PROGRAM – Internal Product**

Senator Cash (Written) asked:

How many additional applications have been made for judicial review of IMR assessments since Dec 11? Please break down between FMC and FC. How many applications have been decided in the courts since Dec 11? Of all matters decided in the FMC and FC, how many have reversed the decision by the IMR and how many have confirmed? What were the main reasons for decisions being reversed? Who paid the IMAs costs of these applications. What have been the costs to date for the DIAC to defend these cases?

*Answer:*

As at 31 May 2013, a further 89 applications for judicial review of Independent Merits Review (IMR) assessments have been made since 31 December 2012. This is broken down into 74 matters in the Federal Circuit Court (FCC), formally known as Federal Magistrates' Court and 12 Federal Court (FC) appeals from the FCC. The remaining three applications were to the High Court.

The courts do not confirm or reverse the assessments; they make orders dismissing the applications or declarations that the assessment is affected by legal error.

In the period 1 January 2013 - 31 May 2013, 67 matters had been decided by the courts after a defended hearing (42 in the FCC, 24 matters in the FC and one matter in the HC). Of these matters, the courts dismissed 52 applications for review (30 in the FCC, 21 in the FC and one in the High Court).

In 15 matters, (12 FCC and three FC) the court declared that there was a legal error in an IMR assessment.

The main reasons for courts declaring that there were legal errors in IMR assessments were a failure on the part of the Reviewer to disclose relevant adverse information to the applicant or the Reviewer failing to consider all of the applicant's claims.

The Department is usually ordered to pay the costs of applications where the courts have declared that there is a legal error in an IMR recommendation. The Department does not keep separate statistics relating to costs paid in respect of cases where the courts have declared that the IMR assessment contains a legal error.