

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING: 1 November 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(131) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

I refer to the case of "SRHHH" and Minister for Immigration and Indigenous Affairs [2005] AATA 1020 (14 October 2005)

1. I understand this man has been in detention for over six years now and recently won a case. When will he be released?
2. Provide the total litigation costs including court awarded costs surrounding this case. What is the justification for this cost.

The Tribunal member concluded at paragraph 184: "First, if all the evidence that the applicant was able to adduce in these proceedings had been available at the time of the original hearing, his detention might have ended in 2001"

3. Why was the evidence not made available in the previous hearings? Will DIMIA now change this practice to ensure justice is served and unnecessary detention is avoided?

Answer:

1. SRHHH has remained in immigration detention whilst he pursued merits and judicial review in respect of his protection visa application. In light of the recent AAT finding that SRHHH is not excluded from refugee protection, the department is urgently addressing the other matters which must be resolved in order to finalise his protection visa application. This includes conducting a refugee assessment and obtaining a security assessment from the relevant agency. The refugee assessment work is currently underway as is the security assessment. The department is treating this application as a high priority and will finalise the decision as soon as possible. If SRHHH is found to warrant Australia's protection and satisfies health and character requirements, he will be granted a protection visa and immediately released from detention.
2. SRHHH initially challenged the Department's decision in the AAT where he was unsuccessful. He incorrectly appealed the AAT decision to the High Court who remitted it to the Federal Court where the Department was also successful. He appealed to the Full Federal Court where he was successful and the matter was remitted back to the AAT for re-determination. At the second AAT he was successful on the basis of new information which he and his witnesses provided at the hearing. The Department's total litigation costs for these matters were \$295,623.43.

In addition, the Full Federal Court ordered the Department to pay SRHHH's costs for the High Court, Federal Court and Full Federal Court matters, a total of \$209,996.52. The total cost to the Department for the litigation of these matters was therefore \$505,619.95.

The Department defended each of these matters in accordance with the Legal Services Directions' model litigant policy on the basis that we had Counsel's advice that the Department had reasonable prospects of success on each occasion.

3. The evidence presented at the hearing referred to by the Tribunal member at paragraph 184 related to evidence presented on behalf of SRHHH himself. SRHHH had a different firm of solicitors and Counsel represent him at each of the hearings held before the Administrative Appeals Tribunal. The evidence adduced by SRHHH at each hearing was a matter for him and his lawyers. The Court's criticism in the comment quoted above was directed at SRHHH and his representatives rather than the Department.