

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING: 15 October 2012

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(SE12/0063) 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:

Statistics previously supplied in the response to Question on Notice AE 2012/0029 were as at 31 December 2011. As at 30 September 2012, a further 253 applications for judicial review of Independent Merits Review (IMR) assessments had been made. This is broken down into 186 matters in the Federal Magistrates' Court (FMC), 57 Federal Court (FC) appeals from the FMC and 10 applications for special leave to appeal FC decisions in the High Court (HC).

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 2012-30 September 2012, 329 matters had been resolved by the courts (267 in the FMC, 60 matters in the FC and 2 matters in the HC). Of these matters, the courts dismissed 182 applications for review (142 in the FMC, 39 in the FC and one in the High Court).

In 44 matters, (26 FMC and 18 FC) the court declared that there was a legal error in an IMR assessment.

The main reason for courts declaring that there were legal errors in IMR assessments was denial of procedural fairness. This was generally caused by either the failure on the part of the Reviewer to disclose relevant adverse information to the applicant or the Reviewer failing to consider all of the applicants' 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.