

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARINGS: 11 February 2013

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(AE13/0346) 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 reason 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 SE12/0063 were as at 30 September 2012. As at 31 December 2012, a further 110 applications for judicial review of Independent Merits Review (IMR) assessments had been made. This is broken down into 82 matters in the Federal Magistrates' Court (FMC) and 28 Federal Court (FC) appeals from the FMC.

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 October 2012-31 December 2012, 86 matters had been decided by the courts after a defended hearing (63 in the FMC, 22 matters in the FC and 1 matter in the HC). Of these matters, the courts dismissed 65 applications for review (49 in the FMC, 15 in the FC and one in the High Court).

In 21 matters, (14 FMC and 7 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.