

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
INQUIRY INTO THE PROVISIONS OF THE MIGRATION AMENDMENT (JUDICIAL  
REVIEW) BILL 2004

ATTORNEY-GENERAL'S DEPARTMENT

**Question No. 1**

**The following question was referred to the Attorney-General's Department on 18 May 2004:**

Does the Attorney-General's Department hold the view that 93% of migration related applications for judicial review are unmeritorious?

**The answer to the Committee's question is as follows:**

In 2002-03, cases in which the applicant withdrew or the Government won amounted to almost 93% of migration cases before the Federal Court and Federal Magistrates Court. This does not mean that every one of these cases did not raise an arguable claim. However, the rate of 93% reflects the concerns raised by the courts about high levels of unmeritorious migration litigation.

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**Question No. 2**

**The following question was referred to the Attorney-General's Department on 18 May 2004:**

The Bills Digest (p.3) states that figures obtained from the Department of Immigration and Multicultural and Indigenous Affairs show that the number of applications to the High Court seeking judicial review of migration decisions from 1 July 2003 to 15 April 2004 was approximately 400. This compares to 2400 for the whole of 2002-2003. Can you confirm if these figures are correct, and, if so, have you been able to ascertain the reason for such a dramatic drop? Are you able to give a breakdown of applications for judicial review before the High Court, Federal Court and Federal Magistrates Court, in terms of being migration related, and within those that are migration related, by the type of migration matter?

**The answers to the Committee's questions are as follows:**

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has advised that the figures on page 3 of the Bills Digest are accurate and are drawn from the internal database it manages as respondents in migration-related applications.

DIMIA has also advised that the drop in the number of applications to the High Court is a result of the *Muin* and *Lie* class action matters being remitted by the High Court. In addition, DIMIA has advised that a number of practitioners who had been filing large numbers of applications in the High Court are no longer doing so. However, the Attorney-General's Department notes that, notwithstanding this decrease in the High Court, there has been a substantial increase in the overall migration workload of the federal courts in recent years.

A breakdown of migration matters provided by the relevant courts shows that for the period 1 July 2003 to 30 April 2004 there were 452 matters filed in the High Court, 1149 matters filed in the Federal Court and Full Court of the Federal Court and 2030 matters filed in the Federal Magistrates Court. These figures are based on applications filed in the courts. The slight difference between the courts' figures and DIMIA's figures in the Bills Digest is because DIMIA's figures relate to migration applications **received** by them, which can occur in the financial year after the year in which the applications are **filed**. Also, the courts have provided figures for the period to 30 April 2004 and DIMIA's figures have been provided to 15 April 2004.

The Attorney-General's Department has been advised that the courts' case management systems do not record details of the type of migration matter before the courts.