

GOVERNMENT RESPONSE TO MCMILLAN REPORT

The Government accepts the key recommendations of a report prepared by Professor John McMillan AO on the management of litigation by irregular maritime arrivals (IMAs).

The Government commissioned the report in January, following the High Court's November 2010 decision that IMAs were able to seek judicial review of their refugee status determinations.

In commissioning this review, the Government's particular concerns were to finalise disputes over refugee status determinations at the earliest opportunity, avoid prolonged immigration detention, minimise costs and discourage applicants from pursuing unmeritorious litigation.

The Government would like to thank Professor McMillan, the Australian Information Commissioner and former Commonwealth Ombudsman, for canvassing the views of stakeholders and preparing a thoughtful analysis of the legal and policy issues involved.

In view of this considered work, the Government will pick up on Professor McMillan's recommendations to enhance the efficiency of the judicial review process for IMAs.

In his five main recommendations, Professor McMillan recommends against pursuing legislative change but, instead, advocates enhancing current administrative efficiencies.

The Government accepts all of the recommendations, though it will not pursue the suggestion to 'consider' a provisional test case scheme modelled on the Australian Taxation Office's Test Case Litigation Program.

As Professor McMillan notes in his report, the Commonwealth already funds test case litigation through the Commonwealth Public Interest and Test Cases Scheme, which is administered through the Attorney-General's Department.

Moreover, the Government already provides IMAs with government-funded assistance to make protection claims through the Immigration Advice and Application Assistance Scheme.

The Government respects the High Court's decision that IMAs are able to seek review of decisions in the courts but does not believe it would be appropriate to set up a new scheme as the Australian Government already funds a comprehensive range of legal assistance services. Assistance for migration matters is available through those schemes.

The Government accepts Professor McMillan's recommendation to provide information to IMAs at the time of a negative review decision, setting out their judicial review rights. This recommendation has already been implemented.

Professor McMillan's report acknowledges the ongoing communication between the Department of Immigration and Citizenship and the federal courts to develop administrative arrangements to support the efficient resolution of judicial review applications in cases involving IMAs.

This complements the work the Government has done to speed up assessment processes and to streamline the process for conducting security assessments.

The Government is in the process of appointing two additional Federal Magistrates to help the courts manage an increased number of applications for judicial review by IMAs.