

Current Review

- 2.1 This Committee's current review of migration Regulation 4.31B takes place more than five years after the regulation was introduced.
- 2.2 On 10 December 2002 the Minister for immigration and Multicultural and Indigenous Affairs requested that the Committee again review the regulation and report to parliament by 30 April 2003.
- 2.3 In December 2002, the Committee sought submissions from all those who had made submissions to the previous two inquiries, and also advertised the review in *The Australian* on 5 February 2003.

Responses

- 2.4 The Committee received nine submissions:
 - three supported retention of the fee (Department of Immigration and Multicultural and Indigenous Affairs {DIMIA}, Mr G Kimberley and Justice Migration and Visa Services {JMVS}).
 - submissions from the Australian Catholic Migrant and Refugee Office (ACMRO); the Refugee Council of Australia (RCOA); the Immigration Advice and Rights Centre (IARC); the Law institute of Victoria (LIV); and Amnesty International Australia (Amnesty) urged that the fee be abolished.
 - two submissions proposed modifications to the way in which the regulation might be administered: IARC urged that, if the fee was

not abolished, there should be provision to waive it, and the Migration Institute of Australia (MIA) proposed that the fee not apply to unsuccessful applicants from specific countries.

Retain the fee

- 2.5 DIMIA argued that the fee imposed by Regulation 4.31B fee was “effective in controlling applications from people who have no grounds for protection”.¹
- 2.6 Mr Kimberley supported the fee as a deterrent “which may be the only way of reducing... abuse” and observed that it might even be increased.²
- 2.7 JMVS urged that the fee be “paid up front and the amount increased to \$2,000”, with a refund to successful applicants.³

Modify the fee

- 2.8 MIA proposed that unsuccessful applicants from countries where there were well founded fears of persecution should not be charged the fee, but that a fee of “somewhere in the order of \$3,000” should apply to other unsuccessful applicants.⁴
- 2.9 IARC, while opposing the fee, proposed that if it was to be retained, there should be provision “to waive... in compelling circumstances”.⁵

Abolish the fee

- 2.10 ACMRO argued against the fee remaining in force because it was “out of character with the purposes and spirit of the Refugee Convention” and constituted “a fine on the process”.⁶
- 2.11 RCOA agreed that:

the imposition of the fee would be seen as a punishment for those who have compelling reasons why they are unable to

1 DIMIA, Submission No 2, , para 7.3.2

2 Kimberley, Submission No 1, p. 1

3 Submission No 4, JMVS, para 6.

4 MIA, Submission No 9, p. 2

5 IARC, Submission No 6, Recommendation 2

6 The submission did not address the issue of abuse of the PV arrangements. ACMRO, Submission No 5, p. 1

return to their country of origin, but are not found to be refugees on Convention grounds.⁷

- 2.12 RCOA opposed the regulation on those grounds and because, it claimed, the fee had not achieved its objective,⁸ and also because it was their belief that:

in reality, the \$1000 decision fee is less likely to discourage intentionally fraudulent applicants, as they will possibly have a greater capacity to absorb the costs.⁹

- 2.13 IARC, Amnesty and LIV all questioned the effectiveness of the fee and recommended that Regulation 4.31B be repealed.¹⁰ Amnesty emphasised that because the RRT might be the first time an applicant was able to make their case in person, it was important that they should not be discouraged by the possibility of having to pay a fee.¹¹

Conclusion

- 2.14 As in the Committee's previous reviews of Regulation 4.31B, there was disagreement in the submissions and evidence about whether there should be a fee and also concerning its effectiveness in reducing abuse of Australia's Protection Visa (PV) arrangements.

The review

- 2.15 The Committee considered that the objections to the fee raised key issues which needed to be addressed in relation to the operation of the regulation:

- abuse of the protection visa system;
- the effect of the fee on that abuse; and
- the effect of the fee on bona fide applicants.

- 2.16 The Committee examines these and other issues in subsequent chapters.

7 RCOA, Submission No 3, p. 1

8 RCOA, Submission No 3, p. 6

9 RCOA, Submission No 3, p. 3

10 IARC, Submission No 6, Recommendation 1; LIV, Submission No 8, p. 1, para 5

11 Amnesty, Submission No 7, pp 3-4; Evidence, p. 39