

Effectiveness of the fee

- 5.1 DIMIA claimed that the fee had achieved its aim; however other evidence challenged this view.

Overview

- 5.2 In its submission DIMIA pointed to a 32.5% decrease in the number of applications lodged with the RRT in 2001/2 compared with 1996/7 as evidence of the impact of the fee (see Table 5.1 column 5 below).¹
- 5.3 RCOA disputed this interpretation², and the Committee noted that DIMIA's conclusion depended on which year was chosen for comparison. Had 2000/1, for example, been compared with 1996/7, then the number of applications lodged would have decreased by only 4.5 per cent (see Table 5.1 column 5 below).
- 5.4 RCOA focussed instead on other DIMIA data which showed that PV applications fell from 11,171 in 1996/7 to 8,670 in 2001/2:
a 22% decrease, which could clearly account for a significant proportion of the decrease in applications to the RRT [see Table 5.1, column 1 below].³

1 DIMIA, Submission No 2, para 5.3.5

2 RCOA, Submission No 3, p. 3 disputes DIMIA, Submission No 2, para 5.3.5 citing Table 5.3.1T showing 1996/7 = 8,496, 2001/2 = 5,734

3 RCOA, Submission No 3, p. 3, citing DIMIA, Submission No 2, Table 5.1.1T

Table 5.1 PV applications and appeals to RRT 1995/6 – 2001/2

Column					
1	2	3	4	5	6
Year of PV Application.	Primary Received	Primary Rejected	Primary Granted	Lodged RRT	% Primary Rejected who lodge with RRT
1995/96	8,100	6,382	1,195	5,142	<i>80.1</i>
1996/97	11,171	10,043	869	8,496	<i>84.6</i>
1997/98	8,155	7,246	693	6,216	<i>85.8</i>
1998/99	8,407	7,237	983	6,412	<i>88.6</i>
1999/00	12,172	7,485	4,221	6,755	<i>90.2</i>
2000/01	13,127	8,914	3,325	8,115	<i>91.0</i>
2001/02	8,670	6,526	1,431	5,734	<i>87.9</i>

Source: Protection visa cohort in DIMIA, Submission No 2, Table 5.1.1T

5.5 Consequently, RCOA suggested that a:

more accurate analysis of the impact of the fee would be the rates at which those applicants who were rejected at the primary stage sought a review of that decision at the RRT. For the period 1996-1997, 85% of those who received a primary rejection lodged at the RRT. The similar rate for 2001-2002 was 88% and this figure peaked at 91% during the previous financial year [see Table 5.3, column 6 above].⁴

5.6 Amnesty echoed this view⁵ and RCOA argued that the increased proportion of :

those seeking a review of their primary decision would indicate that there has not been a general deterrence as might be expected with the introduction of \$1000 fee.⁶

4 "Figures calculated from DIMIA Submission to the Joint Standing Committee on Migration on Migration Regulation 4.31B, February 2003, p. 15, Table 5.1.1T" RCOA, Submission No 3, p. 3

5 See: Amnesty, Evidence, p. 39

6 RCOA, Submission No 3, p. 3

- 5.7 JMVS also concluded that “the deterrent effect of the \$1,000 fee has diminished”.⁷
- 5.8 The Committee agreed that the proportion of unsuccessful applicants appealing to the RRT had increased since the fee was introduced in July 1997.
- 5.9 In assessing the meaning of this data, the Committee noted that the national composition of the applicant population was not constant from year to year. The origins of the applicants and their confidence in the validity of their asylum claims, even after initial rejection, would thus have an effect on the proportion appealing to the RRT in any one year.
- 5.10 Amnesty’s critique was that:
- if they want to abuse the system, they will apply to the Refugee Review Tribunal because it will extend their stay and then they can leave without paying the fee.⁸
- 5.11 This, argument, the Committee concluded, held only for those whose aim was to remain until their appeal avenues were exhausted. It did not mean that those who wanted to stay on in Australia would not be deterred.

Conclusion

- 5.12 Significantly, in the Committee’s view, neither RCOA nor JMVS claimed that the fee was ineffective. Rather their position was that, as it currently operated, it was less effective than might be expected.
- 5.13 The Committee concluded that the high proportion of RRT applications in any one year was not necessarily evidence that the fee was ineffective. In assessing the situation the Committee observed that the proportion of unsuccessful PV applicants seeking RRT intervention may now be stable, and possibly falling.

Detailed evidence

- 5.14 At a more detailed level, DIMIA analysed appeals from nationalities which historically had statistically significant application rates but a PV grant rate below two per cent. According to DIMIA, these “low

7 JMVS, Submission No 4, para 6

8 Amnesty, Evidence, p. 40

refugee producing (LRP) nationalities”⁹ were those in which non-genuine applications for RRT review could be concentrated, and:

If the fee has been effective in reducing applications to the RRT from persons who have no grounds for protection, that effect should be identifiable in the RRT take-up rate for applicants of ‘LRP’ nationality from 1997/98 onwards.¹⁰

5.15 Over the period in which the fee had operated, DIMIA claimed that:

- the absolute numbers of LRP applications to the RRT fell;¹¹
- the proportion of LRP in the RRT’s caseload declined;¹² and
- the proportion of unsuccessful applicants from LRP countries proceeding to the RRT stopped rising and stabilised:¹³
 - ⇒ in the year prior to the introduction of the fee, LRP review take-up rates were increasing from 74.4% to 82.2%;
 - ⇒ this proportion could be expected to continue to rise quickly if no measures were introduced to counter it; **but**
 - ⇒ in the year following the fee’s introduction increase was markedly reduced, rising from 82.2% to only 82.7%; **and**
 - ⇒ in subsequent years the proportion had been relatively stable at between 85.3% and 88.6% (see Table 5.2 below).¹⁴

5.16 DIMIA concluded that:

the RRT take-up rate for people of ‘LRP’ nationalities, who have a greater proportion of claimants who have no grounds for protection, would clearly be significantly higher without the fee.¹⁵

9 *Low Refugee Producing* (‘LRP’) groups... “are those nationalities from which, over the seven financial years 1995/96 to 2001/02... ten or more applicants have applied for PV and the grant rate is below 2%.” DIMIA, Submission No 2, paras 5.5.12-13

10 DIMIA, Submission No 2, para 5.6.1

11 In 1996/7 there were 4,300 applications from people from low refugee producing countries for review. In 2001/2 there were fewer than 2,000. DIMIA, Submission No 2, Table 5.6.2T, Evidence, p. 57

12 In 1996/7, 52% of its caseload was processing people from low refugee producing countries, by 2001/2, it was 33%. DIMIA, Submission No 2, Table 5.6.2T, Evidence, p. 57

13 In 1995/6 the proportion was 74.4%; 1996/7 = 82.2%, thereafter in the range 85.3% - 88.6%. DIMIA, Submission No 2, Chart 5.6.1.C, Evidence, p. 57

14 DIMIA, Submission No 2, para 5.6.3.

15 DIMIA, Submission No 2, para 5.6.3

Table 5.2 RRT Take-up Rates ‘High Refugee Producing’ (HRP) and ‘Low Refugee Producing’ (LRP) Nationalities

Nationalities	1995/6 (%)	1996/7 (%)	1997/8 (%)	1998/9 (%)	1999/00 (%)	2000/1 (%)	2001/2 (%)
High Refugee Producing	85.9	89.8	95.3	96.4	95.2	96.3	94.5
Low Refugee Producing	74.4	82.2	82.7	85.4	88.5	88.6	85.3
All nationalities	80.1	84.6	85.8	88.6	90.2	91.0	87.9

Source DIMIA Submission No 2, Table 5.6.1T Protection visa cohort Table 5.1.1T

5.17 RCOA objected that:

DIMIA appears to equate ‘abusive’ applicants with those from Low Refugee Producing (LRP) Nationalities who may not have grounds for protection on Convention grounds... [but] while an applicant may not meet the criteria of a Convention refugee he or she should not be viewed as ‘abusive’.¹⁶

5.18 Consequently, RCOA:

would question the validity of such an analysis in determining the efficacy of Migration Regulation 4.31B.¹⁷

5.19 The Committee examined this objection and concluded that DIMIA did not identify applications from Low Refugee Producing Countries as abusive. Rather, DIMIA’s position was that:

Applications from persons who have no grounds for protection can be expected to be concentrated more in the group of nationalities with low success rates.¹⁸

Conclusion

5.20 The Committee concluded that DIMIA was not necessarily equating LRP nationalities with abusive applications.

16 RCOA, Submission No 3, pp 3-4 and citing DIMIA, Submission No 2, para 5.6.3.

17 RCOA, Submission No 3, p. 3

18 "A lower approval rate tends to point to any adverse situation in their countries of origin being less severe or widespread from a perspective of human rights abuses than that in other countries.... low refugee producing’ (‘LRP’) groups... are those nationalities from which, over the seven financial years 1995/96 to 2001/02... ten or more applicants have applied for PV and the grant rate is below 2%." DIMIA, Submission No 2, paras 5.5.12-13

- 5.21 In addition, the Committee noted the proportions of those of LRP nationalities appealing the RRT remained below those of the HRP nationalities.

Summary

- 5.22 The Committee accepted that DIMIA's analytical approach of identifying "low refugee producing" nationalities was a useful, if imprecise, tool in assessing the possible impact of the fee on possibly abusive applications.
- 5.23 The Committee consequently accepted DIMIA's assertion that the RRT take-up rate for people of LRP nationalities, who have a greater proportion of claimants who have no grounds for protection, would be significantly higher without the fee.
- 5.24 The Committee further concluded that, as non-*bona fide* or abusive claimants might be expected to be concentrated in the LRP group, the consistently lower proportions of these nationalities proceeding to the RRT was evidence that the fee was a disincentive.
- 5.25 The Committee then considered whether the fee might deter *bona fide* applicants from seeking RRT review.