



amnesty international australia



Submission to Joint Standing Committee on Migration with respect to Reg 4.31B of the Migration Regulations

Introduction

Amnesty International welcomes the opportunity to make a submission to the Joint Standing Committee on Migration regarding the operation of Migration Regulations Reg 4.31B.

In February 2001 Amnesty International made a submission to the Joint Standing Committee on Migration. The submission outlined concerns Amnesty International has about Migration Regulations Reg 4.31B. In this second submission Amnesty International enclosed the points for consideration already submitted and one new point for consideration.

Amnesty International's concern for asylum seekers arises from the organisation's work for the protection of human rights, which is based on fundamental principles as set out in the Universal Declaration of Human Rights.

Amnesty International principally opposes the forcible return of individuals to countries where they are likely to face serious human rights violations, such as becoming prisoners of conscience, or facing torture, 'disappearance', extra-judicial execution or the death penalty.

Amnesty International bases its work on the principle of *non-refoulement*, which the organisation considers to be a norm of customary international law binding on all states. The principle of *non-refoulement* is set out in numerous international human rights treaties, including Article 33(1) of the 1951 Convention Relating to the Status of Refugees (the Refugee Convention) and Article 3(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In order to comply with their obligations to ensure the protection of human rights, governments must scrupulously observe the fundamental principle of *non-refoulement* in all cases where such people seek their protection. Amnesty International accordingly calls on all governments to observe certain basic principles in their asylum procedures. These principles are based on international standards and are set out in the International Covenant on Civil and Political Rights and relevant Conclusions adopted by the Office of the United Nations High Commissioner for Refugees Executive Committee.



Amnesty International's procedural point number eight outlines the necessity of appeal from a negative asylum decision:

All asylum-seekers must receive written reasons if their asylum claim is rejected, and have the right to appeal against a negative decision. The appeal should normally be of a judicial nature and must in all cases have suspensive effect on expulsion.

Points for Consideration

In the previous submission Amnesty International brought the following points for consideration to your attention:

- Amnesty International is concerned at continuing rhetoric concerning so-called "abuse of the system", which appears to be directing Australia's asylum policy. Each asylum determination system in the world is subject to certain levels of abuse. Australia is no different, but there is no evidence that levels of abuse in Australia exceed that in other countries. The idea behind a fair and satisfactory asylum determination system is to decide who is and who is not a refugee.
- Amnesty International remains concerned at the justification of imposing the post-decision fee of \$1000. Imposing such a fee on all asylum-seekers, excepting those with a successful RRT decision or who have had their cases remitted from the Federal Court for reconsideration by the RRT, implies that all applicants seeking independent review are unmeritorious unless proven otherwise. Amnesty International considers that the imposition of a post-decision fee creates a perceived and/or financial burden on all applicants, regardless of their *bona fides*. Further, the fee effectively impedes the right of all applicants to seek and enjoy in other countries asylum from persecution, as stated in Article 14 of the Universal Declaration of Human Rights, by deterring asylum seekers from appealing negative primary decisions. Deterrence is not a legitimate policy reason under international law.
- There are a range of reasons why an application to the RRT may be unsuccessful; it does not necessarily indicate that the claim was unfounded or was not legitimate. The RRT is required to assess claims against the terms of the Refugee Convention, and there will be instances where asylum-seekers with legitimate fears of being subjected to serious human rights violations upon forcible return may fall outside of the scope of the Refugee Convention. Amnesty International considers that asylum-seekers in this situation should not be penalised, and that the principle of *non-refoulement* should still apply.
- Amnesty International notes the drop in the number of applications to the RRT in 1997/98 but questions whether this is primarily due to a reduction in unfounded applications. If anything, those seeking to "abuse" the asylum determination system as a means to prolong their stay or as an extended work visa, are often in the best position to afford \$1000. All asylum-seekers should have an unimpeded



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right to seek asylum, and should not be penalised for an unsuccessful RRT decision.

In addition to these points Amnesty International would like to submit the following point:

- The Refugee Review Tribunal attaches a letter to a negative decision stating that the unsuccessful applicant needs to pay the \$1000 fee. The fee cannot be waived on the ground of financial hardship. The letter states "*if the fee is not paid, you will have a debt to the Commonwealth of Australia*". *If the debt remains unpaid you will be unable to obtain a visa in the future*". The unpaid debt criteria is based on Migration Regulations 1994, Schedule 4, reg 1.03, 4004. For many asylum-seekers, who won't have the money to pay their debt, this means they don't have an option to obtain another, non-humanitarian, visa.

Conclusion

Amnesty International considers that Migration Regulations Reg 4.31B does not attain its purported objective. The imposition of a post-decision fee simply penalises unsuccessful asylum claims without reference to the circumstances of the application and impedes the right of asylum-seekers as stated in Article 14 of the Universal Declaration of Human Rights, by impeding and deterring asylum seekers from appealing negative primary decisions. In this, the present procedure is unfair.

Recommendations

Amnesty International thus urges the Committee to recommend that:

- the \$1,000 post-decision fee currently imposed on applicants to the RRT be abolished as of 1 July 1999;
- a mechanism be introduced to protect those who may face serious human rights violations if they were to be forcibly returned to their country of origin, but who are not recognised as refugees within the definition of a refugee in the Refugee Convention.

This submission has been prepared by Dr Graham Thom, Refugee coordinator, on behalf of Amnesty International Australia.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graham Thom', written over a horizontal line.

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