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Official Committee Hansard

JOINT COMMITTEE ON MIGRATION

Reference: Review of migration regulation 4.31B

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JOINT COMMITTEE ON MIGRATION

Wednesday, 3 March 1999

Members: Mrs Gallus *(Chair)*, Senators Bartlett, Eggleston, McKiernan and Tierney and Mr Baird, Mrs Irwin, Mrs May, Mr Ripoll and Dr Theophanous

Senators and members in attendance: Senators Bartlett and McKiernan and Mr Baird, Mrs Irwin, Mrs Gallus and Dr Theophanous

Terms of reference for the inquiry:

Review of Migration Regulation 4.31B

WITNESSES

Committee met at 11.04 a.m.

CHAIR—I now open the second public hearing for the committee's inquiry into Migration Regulation 4.31B. This matter was first referred to the committee on 6 January 1999. Regulation 4.31B imposes a $1,000 post-decision fee on unsuccessful applicants to the Refugee Review Tribunal. This regulation was introduced on 1 July 1997, along with a package of other measures designed to curb abuse in the refugee application process. When regulation 4.31B was introduced, the government and the opposition agreed that it would be subject to a sunset clause and that the government would ask the Joint Standing Committee on Migration to review the provision. The current inquiry is in response to that undertaking.

During this inquiry the committee will examine issues such as the impact of the fee on genuine asylum seekers, its effectiveness, and possible alternatives to the fee. At this hearing members will hear evidence from the Refugee Council of Australia, the Refugee Advice and Casework Service, and the International Commission of Jurists. If you would like further details about the inquiry, please feel free to ask any of the committee staff here at the hearing.

CRANSTON, Ms Angela, Coordinator, Refugee Advice and Casework Service

PIPER, Ms Margaret Claire, Executive Director, Refugee Council of Australia

CHAIR—Welcome. You have given us a submission, Ms Piper. Would you like to amend that submission in any way or would you like to make an opening statement before questions?

Ms Piper—Thank you, Madam Chair. There are no amendments, but I may just reiterate some of the key points in the submission to assist the members of the committee to focus their attention on the new issue—it is quite a quantum leap in thinking from the tourist visas.

CHAIR—It is indeed, but could you make it very brief because the committee members do have the submission in front of them.

Ms Piper—Just to reiterate, the council expressed concerns about the $1,000 decision fee at the time that it was introduced, and these concerns are no less now after seeing the fee in operation for the last couple of years. Our submission looks at the kinds of people who apply to the Refugee Review Tribunal and points out that those who do have a well-founded fear of persecution and those who have strong non-convention related reasons for not returning to their country of origin are in fact negatively impacted by the imposition of the fee, even though the former do not have to pay it. We also contend that the fee does not appear to have had the same negative impact on those people who it was intended to prevent from lodging to the Refugee Review Tribunal.

The submission concludes by looking at whether or not the regulation has achieved its objective. Our argument is that, on the figures we have been able to obtain, it clearly does not. The department of immigration talks about a 28 per cent drop in the number of people applying to the Refugee Review Tribunal, but there are many reasons why this would have occurred without the imposition of this fee. In fact, probably the clearest figures to see whether or not the fee has deterred manifestly unfounded applications to the tribunal are the flow-on rates from the primary stage, which is in the concluding paragraph of the submission. You will see that, before the fee was introduced, 71 per cent of those rejected at the primary stage applied to the Refugee Review Tribunal. That has in fact gone up 10 per cent in the ensuing years. So our contention is that the $1,000 fee has caused considerable pain to people we are most concerned about, and it has not had the desired effect.

CHAIR—Ms Piper, can I just stop you there, because your figures do not actually line up with the figures the department of immigration gave us when we were talking to them in Melbourne last week. You have said that your flow-on figure in 1995-96 was 71 per cent. Is that correct?

Ms Piper—Yes.

CHAIR—In 1997-98, you have got it as 81 per cent.

Ms Piper—Yes.

CHAIR—The figure that DIMA has given us for 1995-96 is 80.4 per cent and in 1998-99 we have got 79.6 per cent. Your figures were 71 per cent and 81 per cent, which shows an increase in flow-on, and DIMA's figures are 80 per cent and 79 per cent, which shows a slight decrease. We asked DIMA about those figures in Melbourne. They said they were standing by their figures, they are the right figures, and they have no idea where you got your figures. Perhaps we could ask you where you got your figures?

Ms Piper—From the department of immigration. If you like, I can supply the statistics that I based those on, but they were statistics provided by the department of immigration to the DIMA/NGO/IGO consultative forum, which is the national policy forum.

CHAIR—I would be grateful if you could give us those figures because obviously there is some discrepancy. Your figures would certainly disprove the case that DIMA has put forward and this becomes a very important issue for us.

Ms Piper—I must say that I am dependent on them for the statistics and these were the ones that they have provided on a quarterly basis to this forum.

CHAIR—We will have to work out why we have the discrepancy. Do you want to conclude?

Ms Piper—No, that was my conclusion. If I can just draw the committee's attention to the recommendations: that the fee be abolished; and also that the issues that are a concern to the department of immigration and the minister—which we can see are concerns—would best be addressed through other means, in particular greater regulation of the migration industry.

CHAIR—You are thinking in particular of the migration agents?

Ms Piper—Yes, there are still many unethical and incompetent members in their midst.

CHAIR—You actually have the protection of parliament at this hearing. I would not want you to go into character assassination, but do you have any evidence you would like to give us on where you are aware of migration agents leading people to make false claims?

Ms Piper—Could I preface my remarks by saying that what I will say is on the basis of second-hand evidence. The Refugee Council is a policy body and we depend—

Mr BAIRD—Excuse me, Madam Chair. We have television people here. I do not know whether you want to be saying that in front of them or not. It is your call.

Ms Piper—I will not be mentioning names.

CHAIR—I am sure you will regulate what you want to say in the knowledge that you have SBS right on you.

Ms Piper—Just to clarify, my remarks are based on the fact that the Refugee Council is a policy body. We do not deal directly with clients. I do work very closely with our member

agencies and with a number of inter-agencies that include advisers who I would consider to be ethical advisers. There are many, many stories reported by these advisers of clients who come to them, who have paid very large sums of money to advisers who have provided little or no advice, who have accepted this money and submitted applications that are patently inappropriate, such as a refugee status application where there is no fear of return on behalf of the applicant and they have not advised the applicant that this is in fact what they are applying for.

A person will go to one of these agents and say, 'I would like to extend my stay in Australia.' The agent will say something along the lines of, 'If you pay me $5,000'—or $10,000, $15,000—'I can do it for you. Sign on the bottom line, please.' The applicant usually has very little understanding of what is going on, is told not to attend any of the hearings, and gets to stay in the country for two or three years.

What I have said in the submission is that I regard these people not as abusers of the system but as victims of the agents who are, in fact, the abusers. There are some well-known agents who are continuing to practise even though complaints have been made against them. There are also agents practising despite not being registered. There has been very little in the way of high profile action taken against some of these agents. I believe you will be speaking to David Bitel later today from the International Commission of Jurists. He is a practising immigration lawyer, as many of you would be aware, and I would suggest that if you were to take this up with him, he has a lot more first-hand experience on this particular issue.

CHAIR—Thank you.

Senator McKIERNAN—In regard to your four recommendations, I understand where you are coming from. But even if all four recommendations were adopted there is no penalty imposed on the individuals who patently abuse the system. Have you deliberately avoided putting a penalty on it?

Ms Piper—The answer is yes, because from the arguments that are presented earlier in the submission I would contend that a large number of people are not deliberately abusing the system. The fact that there are some people who are abusing the system is, to some extent, a function of the advice that they are receiving—whether it is very bad advice from the unscrupulous agents that I have previously mentioned, or the fact that at the moment there is virtually no free or assisted advice that they can receive.

This is a very grave concern in this area and something that was taken up in the recent inquiry into the Immigration Application and Assistance Advice Scheme, IAAAS. The fact that somebody is not granted refugee status by the tribunal does not mean that theirs was an abusive application. This is a terribly important point that I would like to stress, because I think it is something that does not necessarily come through in the submissions of those who would support the maintenance of the fee.

The definition of refugee status is incredibly narrow, and the people who fit the criteria are not necessarily all of those people who have very good reasons to fear returning to their country of origin. For instance, the Refugee Convention does not cover people from countries like Somalia and Algeria, who could be the victims of generalised violence. It

allows people to be returned to countries where there is no rule of law and where there is generalised violence. These people have very good reasons to be applying to stay in this country and the only way they can do so is to go through the refugee status determination procedure and, if they are rejected by that, turn to the minister and hope that he will exercise his discretionary powers in their favour. The absence of an administrative humanitarian stream is something that the Refugee Council has brought up repeatedly over many, many years since the old administrative arrangements were dismantled. It is something that we feel overburdens the refugee status determination procedures.

Senator McKIERNAN—I asked the question particularly because you have five categories on page 2 of your submission. In putting those five categories forward, I take it that the Refugee Council of Australia is accepting that there are some people who do seek to abuse the system.

Ms Piper—Oh, yes.

Senator McKIERNAN—That is why I asked about the penalty for those who are blatantly abusing the system. What type of system could be introduced to identify and expeditiously process those applications that are manifestly unfounded? Some people would argue that perhaps an application from a person of United States nationality would fall into that category, but would that necessarily be the case?

Ms Piper—I think that it is important to recognise that there is no country from which somebody could not be considered to be a refugee.

Senator McKIERNAN—That is the point I was trying to make.

Ms Piper—You cannot say that, if somebody comes from the United States, they could not be a refugee. In fact, I heard of an interesting case a couple of years ago, which did not go to fruition, where a woman came to Australia from one of the southern states in the United States. The woman was the witness to a crime, a gangland-type crime, and the local authorities were not in a position to provide protection for her. She fled first to Canada and had death threats made against her there—she had a young child—and then came to Australia and lodged an application for refugee status here.

I am not commenting on whether or not she would be a refugee, but there was somebody from the United States who had genuine fears; and similarly for many European countries where there is organised crime, and somebody is a victim of that crime and the local authorities cannot protect them. In that sense, we cannot say there are countries that are 'white countries', as our European cousins are trying to do in relation to refugee status.

There again, there are people who are using the system to delay their stay, and knowingly doing so. If these cases could be flagged in the first instance by somebody looking at the cases when they come through—noting that a case is manifestly unfounded, putting it into a processing stream where it is processed within weeks rather than months or years—the incentive to lodge manifestly unfounded claims would be reduced and people would be less likely to do it. The reality is that whatever system you have, whether it is in finance or immigration or whatever, there will never be no abuse. What you have to do is

put systems in place that will minimise the likelihood of abuse and minimise any incentives for abusers, without putting barriers in place to those people who are using the system for legitimate reasons, irrespective of what their outcome may be at the end.

Senator McKIERNAN—There is a priority in existence now for the processing of review applications and the priority takes into account those in detention, those who are victims of torture and trauma. In putting forward this proposal for these manifestly unfounded applications, would they take priority over those others?

Ms Piper—I do concede the dilemma. I think that it is an issue of resources and I do not want to say that one should have greater priority over the other. What I suppose I am saying is that for a system to be managed properly it needs sufficient resources to do what it needs to do to function appropriately. Does that make sense? You are looking sceptical.

Senator McKIERNAN—I am, actually, because it is not resolving the problem that I have and how I address this issue from here. There is a difficulty: I have problems with the $1,000 fee, but I have also problems with those that are abusing the system now.

Ms Piper—One of the things that I would like to see in the tribunal is a pre-assessment phase, which they do not appear to have the opportunity to do at the moment. Those people that are granted priority are granted priority because some external factor has flagged those cases as priority cases, be it the fact that they are in detention—which is very clear—or the case coming with a clear indication that it is from a survivor of torture and trauma or the person is in severe hardship. This requires them to have an adviser, which many do not, or somebody who knows the system sufficiently well to provide this kind of flag.

Ideally, all cases submitted to the tribunal should have a preliminary assessment and they can be streamed accordingly. Now, I do recognise that there are resource implications for what I am suggesting, but I am also saying that, for the system to operate efficiently and with integrity, we need to look at ensuring that the resources are there for it to minimise the likelihood for abuse. At the same time, we need to expedite the processing of the cases of those people who are genuinely needy, be they people who will be granted refugee status at the other end or people who may not be granted refugee status but who are in great financial hardship during the determination procedures.

Senator McKIERNAN—Both you and I can take responsibility for those in detention being granted a priority in processing, but could a stream of humanitarian determination be introduced that would not be subject to judicial review? I am asking that question in line with the government's thought process, and the minister's thought process, about judicial review, because I have a different inquiry I am following on judicial review. Do you think that there could be built back into the process a humanitarian stream that would not be subject to those reviews in the courts, which others allege are also used as delaying mechanisms for people's departure from this country?

Ms Piper—I will preface my comment by saying that, as a non-lawyer, I am not the best equipped person to answer this and I am sure that David Bitel would have many views on this issue. I would be extremely uncomfortable indeed having any form of administrative process that was not subject to review of some kind.

Senator McKIERNAN—The minister's decision making now is not subject to review. It is a non—

Ms Piper—It is not an administrative decision making process.

Senator McKIERNAN—Thank you.

Senator BARTLETT—I have just a couple of questions. I will try to keep them specifically to the $1,000 fee, although I realise there are a lot of related issues. Part of it obviously is: if we are not to continue the fee, what other mechanisms should be in place? You mention in your submission increasing measures against unscrupulous migration agents, and I gather from your submission and your comments you think not enough is being done in that regard at the moment. You mention a high profile prosecution or two, things like that. Can you suggest anything beyond that that needs to be done to crack down in this area?

Ms Piper—There is very little faith at the moment in the regulatory mechanism that has been in place thus far. There is a lot of awareness of complaints having been made and very little being done about those people against whom the complaints have been made, despite clear evidence that they are abusing their role as agents. The high profile prosecutions would be just part of a process of closer regulation. We have this regulation in place and it is important that it is seen to be doing that which it was put there to do. I am sorry, I am actually obfuscating a little in this answer and I am not getting quite where I wanted it to go. I suppose what I am saying is that if we have regulation it needs to come with teeth. Prosecution is part of it; closer scrutiny and regulation is also part of that.

Senator BARTLETT—Can I get your comments on a few other options that have been put forward, apart from just continuing the fee as it is. Obviously, when the $1,000 fee was brought in there was the 45-day rule at the same time, and there have been subsequent changes with work rights. Do you see any value in, perhaps, only requiring a fee when there is permission to work attached at the same time, or for people only in the first 45 days who are claiming those—

Ms Piper—Permission to work does not necessarily mean that a person can get work, and this is a very important thing to recognise as well. If you happen to be a Somali woman who has arrived in the country with six kids, permission to work means nothing—other than the fact that, fortunately, you have Medicare to cover you, but not necessarily your children. So I would not support that notion simply because there is not necessarily the suggestion that these people are prima facie going to be in a position to pay a fee. Some of them may be.

Senator BARTLETT—What about the proposal to just empower the RRT to put on a fee—which would, in practice, be more like a fine—if they determined a claim was vexatious?

Ms Piper—I suppose I would have least trouble with that if there were to be any punitive action taken.

CHAIR—Just to clarify, Ms Piper, you said that at least the Somali woman would be entitled to Medicare but, you said, not necessarily the children.

Ms Piper—Yes.

CHAIR—It is our understanding that once the mother has refugee status her children are covered.

Ms Piper—Once she has status, yes, but not during the determination procedures.

CHAIR—Are you sure about that?

Ms Piper—I am turning to Ms Cranston, who is sitting behind me. It is my understanding that the Medicare card is issued to the principal applicant on the basis of having permission to work. Because children do not have permission to work and the permission to work—

CHAIR—I understand that they do not have permission to work, but I thought if it was the principal applicant and they were her children then they were covered. Obviously, that is something the committee has to check.

Senator BARTLETT—Perhaps, Madam Chair, we could invite Ms Cranston to come and join us.

Ms Cranston—I am sorry, I cannot answer it off the top of my head, except that, yes, if the children are included in the application then they will be entitled to Medicare if the principal applicant—the mother—can work. There is a slight problem if children are born in Australia and are not included in the application. At that point it does need to be argued—

CHAIR—So there is an anomaly there?

Ms Cranston—Yes.

CHAIR—I just wanted to clarify that position.

Ms Piper—Any minors as applicants in their own right are excluded, which is a serious issue in relation to our obligations under the Convention on the Rights of the Child.

Mr BAIRD—What is the experience in other countries, for example the United States, which must have a large number of these types of people applying for refugee status? Is there a similar charge on them in the US, in Britain, and what is the quantum of the charge? That is the first part of the question.

Ms Piper—I am not as familiar with the US processes, because they are in fact quite different from those here and involve a level of judicial processing as part of the determinative processing. I am more familiar with Britain and a number of the European countries and I am not aware of any determination fee there. I cannot say that it is not there, but I do know that when I have spoken to European colleagues about the $1,000 decision fee here they were quite startled by it as a concept.

Mr BAIRD—Could you perhaps provide the committee with information on what charges are applied—

CHAIR—It is my understanding that there are not any.

Mr BAIRD—There are not any. Could you also, as a follow-up question, give us an indication of the typical person in your mind that you are talking about, someone who has been to you recently and you think, 'This is a genuine case.' I am sure as politicians we have struck them where we think, 'We should really do something about it.'

Ms Piper—I think Angela, as a practitioner, is probably the best equipped to answer.

Ms Cranston—I am sorry, you are talking about—

Mr BAIRD—I just want to know the typical profile of what we are talking about—someone you have seen recently so that we can put a human form to this and you can talk about the type of country they are from, the particular problem, why they cannot afford this fee, et cetera. Could you give us a bit of a snapshot?

Ms Cranston—RCOA's submission did actually profile five different types. I will look at one. Obviously, if you have someone from Iraq, you have, prima facie, a very strong case, but I want to give you an example of a case that perhaps is not prima facie strong but needs a very sophisticated argument. I have an applicant from Armenia. He has been put into psychiatric institutions on a regular basis; he does not want to go into those psychiatric institutions. He has now arrived in Australia—

Mr BAIRD—In Armenia he was put into a psychiatric institution?

Ms Cranston—Yes.

Mr BAIRD—For political reasons?

Ms Cranston—He has been identified, I guess, as a person who should be in psychiatric institutions, despite the fact that he is not convinced that he should be. So, arguably, he falls within a social group who is targeted for persecution. I do not know how strong that case is, but I have worries about sending him out of my RACS office without legal representation. He actually has applied within the 45 days successfully, so he will be able to work—whether he can work is another issue entirely. This particular person left a ship; just as easily he might not have been Immigration cleared, he might not have been able to work. We have found him a place to live in one of the male refuges; it is all charity. The whole idea of someone like that finding the $1,000 fee at the end of an RRT decision is entirely beyond me.

Mr BAIRD—This person has genuine psychiatric problems or is it for political reasons that he has been put in an institution?

Ms Cranston—That is obviously something that has to be determined and I am seeking expert evidence in relation to that.

Mr BAIRD—One could argue that, if a person has psychiatric problems and suddenly becomes the problem of the Australian authorities to support, that is an expensive proposition.

Ms Cranston—Indeed, one could argue it. My point in raising that case was that he is not an applicant from Iraq, but it is a case which requires thorough investigation.

Mr BAIRD—I see what you mean. You are not pre-judging the outcome, whether they should or should not be, but just how on earth would this person get $1,000?

Ms Cranston—Yes.

Mr BAIRD—And if they do not raise the $1,000, they are deported. Is that right?

Ms Cranston—No. My problem with this piece of legislation is that it deals with an amazing amount of very difficult concepts but seems to apply this simple rule: 'This person is not a refugee; let's charge them a $1,000 fee.' In my experience, it is just not that clear-cut; it never is. I guess as a lawyer I am saying it is a difficult case and to assume right from the beginning that this person is non-bona fide is an incredible jump to make and one which I cannot make.

Mr BAIRD—Okay, I understand.

Ms Piper—If I could just refer back to the comments I made about the people from Somalia, Algeria, Iran, Sri Lanka, and many other countries who are determined not to be refugees, one can understand—particularly if you are a young male from a number of those countries, or a woman in particular from some of the Islamic countries—that there are many very understandable reasons for not returning to your country of origin. We also do not have incorporated into legislation anywhere any way of examining or finding against any of Australia's other international human rights obligations in relation to return, and I am thinking in particular of the Convention Against Torture, et cetera. There is the S.E. case at the moment of the Somali man against whom action has been taken to the Committee Against Torture against his return. This is another concern—that the tribunal is only looking at one particular definition and is not in any systematic way considering obligations under any other of the conventions.

Mrs IRWIN—Your submission states that the people best able to pay the fee are probably the ones who are abusing the system. What sort of evidence do you have to support that claim?

Ms Piper—If you are lodging an application in order to extend your stay in Australia so that you can continue to work before going back to Fiji or Tonga or what have you, you will be working during that period and see the $1,000 as simply something that gives you an extra 18 months or two years in this country so that you can earn more money to go back to your country of origin. It is the people who are not able to work who are least likely to want to stay in the country on no benefits, no kind of income support. They are the least likely to use the system to stay in the country.

Mrs IRWIN—So you are virtually saying that those people who are working can afford to pay it. But those people who cannot work, if their case is rejected and they have to leave the country, have incurred a debt to the Commonwealth and they cannot put in a further application to migrate to Australia because of that debt?

Ms Piper—That is right, and if these people have no fears of returning, if they do not see the $1,000 as anything other than just an administrative fee, they may not even wish to pay it. They may not want to come back into the country, they have no reason to want to necessarily do the right thing by this country and be responsible. It is my experience, over the many years that I have worked with people in the refugee area, that those people who are applying for refugee status on genuine grounds—be they refugees or not—are very keen to do the right thing by the system. They want Australia to understand their circumstances, to acknowledge their suffering, and they are very fearful of doing anything that may put that process in jeopardy. There is a psychological impact, the fear of abusing the system.

CHAIR—Ms Cranston, you were scheduled to appear next on the list of witnesses. Do you want to make a statement so that we can also bring in questions to you on your own statement?

Ms Cranston—Yes, thank you.

CHAIR—Okay, please address the committee.

Ms Cranston—What I really wanted to do today was just recap my submission. I want to look at the relevance of regulation 4.31B in light of the 45-day rule. I want to look at that and identify some of the asylum seekers who were rejected, including those who lodge applications for review with the tribunal, and why they lodge the applications for review with the tribunal. Then I briefly wanted to look at whether the fee was being collected. I will just read from my paper, if that is all right.

CHAIR—Is this the same submission you have given us?

Ms Cranston—It is not. I have actually thought a bit more about my submission. When first reading migration regulation 4.31B, one is struck by the question, 'Who is the provision trying to target?' Whereas the 45-day rule clearly targets those who apply 45 days after their arrival in Australia, the post-tribunal decision fee appears to be a catch-all provision.

The 45-day rule presumably was applied on the basis that those who apply after 45 days are not genuine because they have waited so long to make their claim for refugee status. Whilst RACS may question this statement, RACS submits that there may be many reasons why a genuine applicant may delay lodging an application. For example, their mental state may mean that they have been unable to negotiate their surroundings. Importantly, however, the present inquiry is about regulation 4.31B and the question that we raised in our submission was that, if the 45-day rule does deter non-bona fide applicants from applying because they can no longer work, then how does the post-review decision fee deter them further?

The department of immigration has pointed to a 25 per cent drop in primary applications for 1997-98, compared with 1996-97. RACS is unable to comment on the reason for this decrease, although the department would perhaps suggest that it is a direct result of the impact of the 45-day rule. RACS suggests that there may need to be further analysis of this, including a review of the number of people who have been refused entry at the airport. However, despite the decline in primary applications, we submit that it is difficult to see why the post-RRT decision fee, which is promoted as such, should contribute to a decrease in the number of primary applications. One would assume that the effect would be a decrease in the number of applicants seeking review. This has not in fact occurred.

In the annual report for 1997-98, the department has noted that in 1997-98 about three-quarters of primary refusals applied for review by the RRT. They stated that that was broadly consistent with previous years. RACS suggests that the post-tribunal decision fee appears to be a catch-all provision that is directed at all unsuccessful review applicants.

RACS submits that any generalisation that suggests that all persons who are ultimately unsuccessful at the RRT can be said to abuse the system is not correct. Rather, we submit that there are types of asylum seekers, including those who are bona fide asylum seekers but who ultimately fail.

In our experience, the overwhelming majority of applicants have a strong subjective fear of returning to their country. Most have fled their country because of some degree of adverse treatment. Unfortunately, the post-decision fee punishes bona fide asylum seekers who fail. And they fail for a number of reasons. For example, the convention definition of a refugee is narrow; they lack legal representation; they have not overcome their fear of authorities; they have not understood a legal argument; or they have not presented the sort of evidence that would corroborate their claims.

In addition, in our experience they apply for review because they have been unable to put their claims forward at the departmental stage for a variety of reasons, including lack of legal representation and the department's practice of making decisions without a hearing.

CHAIR—Before you go any further, I notice in your submission that you had alleged that the department does not give people an opportunity to talk on their submission. The department says that at the primary stage they in fact do give applicants a chance to comment on any adverse information.

Ms Cranston—I actually did not put this in my submission but I have thought about it subsequently when looking at why somebody does apply to the tribunal. I am not suggesting that the department does not follow what is required in the migration regulations, which say that they need to put adverse material to applicants. My point is that they do not routinely conduct a hearing so that applicants can be given a chance to orally present their information.

CHAIR—Okay. Sorry to interrupt but I just wanted to clarify that point.

Ms Cranston—RACS submits that if applicants continue to feel that they have been unable to put forward their claims at the departmental stage, for whatever reason, then they

will continue to seek independent merit review, regardless of a post-tribunal decision fee. I am not sure whether the committee would like me to address whether the fee is being collected. I assume that the submissions have probably appropriately covered that point.

CHAIR—We are aware that 10 per cent of what has actually been imposed has been collected.

Ms Cranston—RACS submits that the underlying problem with this post-decision fee seems to be that, whereas the 45-day rule has sought to identify non-bona fide applicants, the post-decision fee appears to be a catch-all provision which has been imposed with perhaps little consideration as to whom it should specifically target.

We submit that the 45-day rule has already had a significant impact upon bona fide asylum seekers. This is because the assumption that bona fide applicants will lodge their applications within 45 days, in RACS's submission, is not necessarily correct. However, RACS submits that if, as the government argues, the 45-day rule means that non-bona fide applicants do not lodge their applications after 45 days, then we submit that the only applicants who lodge their applications after 45 days must be bona fide. If these applicants are denied permission to work, then RACS continues to question the relevance of the post-RRT decision fee, given their very urgent and immediate problem of trying to survive throughout the processing period.

Dr THEOPHANOUS—My first question is addressed to Ms Piper. You heard that only 10 per cent are actually paying the fee. Do you have any idea what this 10 per cent consists of and perhaps what the 90 per cent of unpaid fees consist of? Do you have any information about that?

Ms Piper—I have no information; I could only speculate. However, I have heard of instances where those who are not abusers of the system, but who were using the system believing that it was an appropriate application to make and who have links to Australia and are concerned about needing to return at some stage, will go to quite extraordinary lengths to pay the fee and do the right thing. That can sometimes be family members in Australia assisting them or taking out loans in order for this to happen, bearing in mind that family members may in fact be newly arrived humanitarian entrants themselves.

Dr THEOPHANOUS—So it is very possible that a large number of those who actually pay are the more genuine ones, and the ones who are not genuine, once they lose—

Ms Piper—I only have anecdotal evidence, but I have heard community concerns of cases where people are going to extraordinary lengths to find the money so they do the right thing and their family members who are in Australia do not have the shame of having somebody deported from the country, et cetera.

Dr THEOPHANOUS—Going back to Senator McKiernan's question about the humanitarian stream, we have a situation at the moment where some people may recognise that they do not quite fall into the convention definition but the only way they can access the minister on the basis of some compassionate situation is to actually make a refugee

application. In this case, they presumably have to be prepared to pay the $1,000 fee if they lose, and then go to the minister. Is that correct?

Ms Piper—The fee is not applicable to those who are successful in their application to the minister but, yes, they have to be prepared to pay if they are not successful.

Dr THEOPHANOUS—So, effectively, if a person is in a situation where they feel that they have very strong grounds for making a compassionate appeal to the minister, they have to be prepared not only to go through the primary stage, then the RRT, but also to pay the $1,000 fee, just to access the minister with respect to—

CHAIR—Only if you are unsuccessful. They only charge the fee after the minister's decision. If he actually agrees on humanitarian grounds, there is no charge.

Dr THEOPHANOUS—But the point I am making is that we have a situation where there are a number of people who are wanting to access the minister who have to go through this process. Senator McKiernan's question was very pertinent and concerned the issue of access to the minister and the question of whether the courts are then able to come in after the minister's discretion is accessed. Obviously, if there were to be a stream which would allow immediate access to the minister without going through the whole rigmarole of the protection, that would be a better solution from your point of view?

Ms Piper—The answer to that is not quite cut and dried; it is not a yes/no situation. There are people who believe that they are refugees, and in their hearts they are—they have fled a very genuine fear in their country. They have the right to have their claims examined by due process. So I think it is important that those issues are in fact looked at, examined appropriately.

There are, of course, some cases that clearly have no convention related or protection related concerns, and you are quite right; it is not appropriate that they have to go through a lengthy determination process that is entirely inappropriate for them. I am not yet convinced that having a decision of this kind made at the ministerial level is necessarily the best way for it to be made, and whether or not an administrative determination process, such as exists in most comparable jurisdictions, would not in fact be better.

Dr THEOPHANOUS—You mean for humanitarian—

Ms Piper—For humanitarian status. For instance, many of the European countries have the convention refugee status and at least one form, and sometimes two or three forms, of alternative humanitarian status. The decision is made at the administrative stage which of the various visas a person is eligible for. Britain has what they call 'exceptional leave to remain' which is the equivalent of a humanitarian status. With a decision of this kind, I believe that it is most appropriate that it be an administrative decision. Elected members of parliament are extremely busy people and to have it at that level is perhaps not the best use of their time. I would see that their time would best be spent on the exceptional cases, the ones that have been through an administrative decision and to which some very special consideration needs to be given.

Dr THEOPHANOUS—In recent times have you proposed to the department or the minister any reforms to the system to include the humanitarian category? If so, can we have a copy of that?

Ms Piper—The Refugee Council has made submissions on this issue for a number of years and has asked for there to be substantive work done on looking at alternatives. It is something that we have done some preliminary work on and I had hoped it would be further advanced than it is, but we have a very small staff, as you are aware, and there have been many competing demands on our time. But it is a priority and we hope to finish a paper in the not too distant future on this issue. But you are quite right, it is not easy, it is not the sort of thing that one can just put their hand into a bag and come out with a wonderful neat solution that is going to satisfy everyone, otherwise that would have been done years ago.

Dr THEOPHANOUS—With the cases which are clearly abusing the system, you mentioned before that maybe some pre-evaluation might be helpful in these sorts of cases. Can you elaborate on what you had in mind there? Do you mean that there would be an assessment on the papers in the first instance?

Ms Piper—Not a determination but something that would look at whether or not a case would be given priority processing. At the moment it is my understanding that an application comes in to the RRT, it is given a processing number and put in a compactus for a considerable period of time before it is constituted to a member, unless there is anything to flag that the case is worthy of priority processing.

I suppose what I am suggesting, and I believe there has been some consideration of this within the RRT, is that, rather than putting the cases away for that period of time, somebody is charged with reviewing the applications as they come in, looking to see whether there are, in fact, issues that have not been flagged that would constitute warranting expeditious processing, particularly if the person is unrepresented. There may be torture/trauma claims, et cetera in the application but no suggestion, other than their inclusion in a submission, that the case warrants priority. Such a process could also determine whether or not a case is manifestly unfounded. The department of immigration dealt quite successfully with its backlog by having the dual priorities, by processing quite quickly manifestly unfounded cases, but at the same time giving priority to cases such as detention cases.

Dr THEOPHANOUS—So you would like to see that expanded to the tribunal?

Ms Piper—Yes, to reduce the incentive to abuse the system.

Dr THEOPHANOUS—Finally, on migration agents—and as you know we now have a system of self-regulation—we have heard evidence from others that they would like to see us move back to a regulated system. What is your view?

Ms Piper—I would defer that one to the council's president and the ICJ Secretary-General, David Bitel, who I know you are meeting. The council does not have views on which is better. We would like to see a system that works and we have not, thus far, seen one.

Senator BARTLETT—I would like to ask a couple of questions of Ms Cranston. Firstly, there are a couple that I asked previously but would like to seek your views on, given that all we are able to focus on at the moment is whether or not the $1,000 fee should be continued. I mentioned previously options that have been put forward, such as whether it just be applied solely to people who have a work visa. Do you think that is at least preferable to the existing situation?

Ms Cranston—RACS would continue to question whether paying $1,000 at the end of the process, if you can work, is relevant.

Senator BARTLETT—What about the situation of the RRT perhaps imposing it only for vexatious claims?

Ms Cranston—I agree with the RCOA's views that that would be preferable to a blanket provision, which is as it stands at the moment. I note that RACS previously supplied submissions back in 1997 when the legislation was first introduced and in that submission we actually referred to the UNHCR guidelines in relation to that. If such a provision was given to the Refugee Review Tribunal then I would suggest that perhaps the mechanism to do it would be to follow those guidelines set down by the UNHCR, which does entail a hearing in relation specifically to the allegation that this is a vexatious claim and an opportunity for the applicant to respond to that claim.

Senator BARTLETT—The other aspect I would be interested in trying to determine, particularly given your experience directly with claimants, concerns varying statistics about whether or not the $1,000 fee has assisted in reducing vexatious claims. Obviously, some of the argument against the $1,000 fee is that it has potential to cause hardship. In your direct experience have you had experience with people where it has specifically generated hardship?

Ms Cranston—We routinely advise people who come to us at the beginning of the process that, firstly, if they are not successful in their claim for refugee status and they leave the country, if they try to return as a visitor it will be extremely unlikely that they will be able to come back in after actually applying for refugee status; and, secondly, that there will be a debt owing to the Commonwealth of the $1,000 fee. I guess that is the kind of advice that we give people about the $1,000 fee: that if they do not pay it before they leave Australia they will not be able to return unless it is paid.

I have spoken to the Immigration Advice and Rights Centre. They tell me that people who actually appear there are sometimes in the position where, if they have lodged an application for refugee status which has been refused, they may also be in a relationship with an Australian spouse. Obviously, they have to leave Australia to actually lodge an application offshore for that and the $1,000 fee is payable if they return. I have been told that those people are in positions of hardship. RACS does not see those people.

The fact is that, when applicants are told that there is a fee payable to the Refugee Review Tribunal if the application is unsuccessful, it is not uppermost in their mind. What is uppermost in their mind is that they fear going back to a country that they really do not want to go back to. I sometimes wonder whether they understand what that exactly means. I am

dealing with people who are from non-English speaking backgrounds who probably do not understand our currency yet. To them it is an amount that is payable in the future if they are not successful, but uppermost in their mind they feel that they will be successful. Obviously, if they have come to RACS they are extremely concerned about their situation, they are seeking our help, and I would say that in my experience we do not see non-bona fide applicants.

Mr BAIRD—If either of you were suddenly the minister for immigration and responsible for this, and trying to keep a national perspective, what changes would you immediately implement in this area?

Ms Piper—How broad is this?

Mr BAIRD—This is confined only to your area. I might have a few ideas in some other areas.

Ms Piper—As Jim knows, our area is fairly broad.

Mr BAIRD—No, just narrowly, in terms of this question.

Ms Cranston—I would probably say that the 45-day rule has had an amazing impact, especially on the people I see. The department has actually stated that there has been a drop in primary applications, so if that is what the 45-day rule aimed to achieve, I think it is achieving that. The sunset clause was passed on the $1,000 payment and I am sorry, but I am ignorant as to why the sunset clause was specifically introduced in relation to that clause only.

Mr BAIRD—Coming back to the question, if you had responsibility, what would happen to the 45-day rule?

Ms Cranston—I have probably sat here and listened to the term 'non-bona fide' thrown around on many occasions. I would like to see an understanding of exactly what that term means. One group of people who I probably do term 'non-bona fide' are those people who are in a spouse relationship and for some reason or another lodge an application for refugee status. They are of concern to me because I do not think they should be applying for refugee status if their claim is in fact that they are in a relationship with an Australian spouse. My concern, and I share RCOA's view, is that they may not have received appropriate legal advice at the earliest opportunity and may have gone off and—

Mr BAIRD—Can I just cut you to the chase. So you would remove that as a group with some pre-screening. In terms of the $1,000 fee, you would want that removed for the category of people that you believe are genuine and not in these other groups?

Ms Cranston—I would like to see a more sophisticated argument of what 'non-bona fide' exactly is and I have not seen that to date.

Mr BAIRD—And you, briefly?

Ms Piper—I will try to be brief, but if I may preface what I am saying by saying that, over the last few years, I have seen a very significant erosion in the entitlements to those people who are applying for refugee status in this country, and also a number of hurdles imposed over which they have to leap. I am very concerned at the impact that this has had on those people who are granted refugee status and who are not making abusive claims. The changes that I would like to see are not only in relation to the removal of the $1,000 decision fee, in respect of which I actually question: what is it achieving? I do not think it has achieved what it was meant to achieve. You are not getting the money; it is not a mega-revenue raiser for the government—this has already been acknowledged. Why is it there? The 45-day rule again is something that needs to be looked at.

Mr BAIRD—What would you do with that if you had the responsibility?

Ms Piper—Again, I am not entirely certain what it is trying to do, other than prevent people from making applications if they have been in the country for a long time. If you happen to be a non-English speaking, highly traumatised person arriving in this country who has come from a country where government authorities have traditionally been the agents of persecution, where you are uncertain who to make contact with, you fear that there are your own government agents in this community who will disclose your whereabouts, these are the kind of people who may not necessarily have worked the system out within 45 days but be very genuine applicants.

Mr BAIRD—So, cutting to the chase again, the removal of the $1,000 fee, the removal of the 45-day—

Ms Piper—Or at least have discretionary powers to waive that if a case is not manifestly unfounded.

Mr BAIRD—Is that it or is there more?

Ms Piper—I would like to see the restoration of the asylum seekers' assistance scheme to the previous level. Its removal, for those people who are means tested eligible for it, has caused enormous suffering. I would like to see the restoration of legal aid eligibility and also the restoration of funding for the other community legal services to a level commensurate with assisting those people, on a means and merits tested basis, with the lodgment of their applications. That would be a start.

Mr BAIRD—All right, we can run those as our recommendations. Did you say also you wanted a pre-hearing to eliminate those—

Ms Piper—Not a hearing.

Mr BAIRD—An early assessment to remove those that are non-genuine?

Ms Piper—Looking at the applications as they come in so that they can then be put into whatever is the appropriate stream within the tribunal. And it is not just the manifestly unfounded; it would also pick up highly meritorious cases early so that they could be processed quickly.

Mr BAIRD—But also the reverse would apply, that you would be streaming out those that clearly do not qualify, for the reasons that you have set out. I heard you say that, in terms of the non-genuine applications being caught up in this, it allows them to delay the practice and gives everyone a bad name. So you would want them removed early in the piece.

Ms Piper—Yes. You give priority to the clearly manifestly unfounded, you give priority to the clearly most in need, and the grey area—which I would suggest is quite a large area in between, the one that does require processing and there is no necessary reason to expedite—they are the ones that end up in the longer queue.

Mr BAIRD—Okay, thank you for that.

CHAIR—A last question from the deputy chair.

Senator McKIERNAN—A couple of questions to Ms Cranston. The 45-day rule is not under review in terms of this regulation, and I must say that I am not convinced by your arguments anyway because I recall the debate at the time. The initial proposal was for a 14-day period and, through a set of negotiations and compromise, it reached 45 days. I am not minded to change because my impression is that individuals, if they apply on the 44th day, do not have an entitlement to work in the vast majority of cases, because they are on a tourist visa. But on the 45th day, if they make an application, they will have an entitlement to work. That is where part of the problem is, I suggest, in this area. So I am not convinced by the arguments on the 45-day rule at this point in time. If that matter ever reopens at a later time, I would be pleased to hear from you. Am I at the wrong end of the stick in terms of where I am coming from on that matter?

Ms Cranston—I am sorry, if they apply prior to 45 days then they will be entitled to work?

Senator McKIERNAN—If they have not applied on the 44th day of their visit to Australia, they do not have working rights at that time, because tourists do not have working rights.

Ms Cranston—No, tourists do not have working rights. On the 45th day, if they apply, they will be, after their tourist visa has expired, entitled to a bridging visa which will allow them to work, yes. You keep saying 44 days. It is 45 plus one, because the day that they actually enter Australia is not counted.

Senator McKIERNAN—Okay, I am wrong. But part of my problem is that it is almost an incentive built into the system to have a holiday and then apply. I am not talking about the genuine cases or the people who have a real chance of success in a refugee claim, because I think they probably will make their application early. But for those who want to abuse the system, the 45-day rule can actually be an incentive for them.

Ms Cranston—My initial reaction to your statement is that they have to know, they have to have spoken to someone who knows that. People come to me, they do not know that, they have not sought legal advice within the 45 days because they do not know, and they are

obviously genuine. If they come to me I would consider them genuine. If they have gone to someone else then I would support what RCOA has said, that perhaps we should be looking at exactly where they are getting their advice from and what exactly—

Senator McKIERNAN—That was my next question: do you have a view and a comment on migration agents per se? It is now almost 12 months since the self-regulatory system came into being. Has the system changed in that intervening period?

Ms Cranston—In my capacity at RACS I have no comment about that. If a person comes to RACS and has clearly been given advice that I am concerned about, I will ask them to approach the Migration Agents Registration Authority. I will not do that on their behalf. I leave the matter entirely to the Migration Agents Registration Authority.

Senator McKIERNAN—Thank you for that. Specifically in your submission you have not laid out recommendations for the committee.

Ms Cranston—My overwhelming feeling is that the committee's role here is in relation to 4.31B. My initial reaction is: if it is not working, why is it there? My initial reaction is that, with regard to the 45-day rule, if you do agree with the department's opinion that people who are abusing the system actually will try to seek rights to work, if that is working, then I question whether regulation 4.31B actually adds anything to identifying or punishing non-bona fide applicants.

Senator McKIERNAN—Ms Piper, could I direct a further question to you. You talked about the torture and trauma, the narrow definition of the Refugee Convention and the rulings the tribunal has got to rule under. As I interpreted what you were saying at that point in time, you are arguing for a widening of the definitions of what a refugee is.

Ms Piper—No.

Senator McKIERNAN—You are not?

Ms Piper—No. What I am saying is that at the moment Australia does not have any systematic way of examining whether a person should not be returned to their country of origin because of any danger that their rights would be abused under other conventions. Under the convention against torture there is a non-refoulement provision—not sending somebody back into a situation where they may be subject to torture or other cruel or degrading treatment. We do not, as a country, systematically consider whether or not a person would be returned into those circumstances. All we have is the ministerial discretion.

Dr THEOPHANOUS—We do have a special category for certain countries, which we introduced for example for the former Yugoslavia, to cover people who—

Ms Piper—But they were people who were in the country at a particular period of time, et cetera, and on a temporary visa. We are not looking at an examination of somebody's claim—

Dr THEOPHANOUS—No, but people came out under those categories.

Ms Piper—We have the offshore humanitarian, but not onshore.

Senator McKIERNAN—And I do not think what Dr Theophanous is saying is relevant in this case, where an individual has gone through primary RRT. The question now is: when the minister is giving a consideration under his non-compellable powers, do each of your organisations make representations on behalf of individuals who are being considered by the minister? They have been through RRT, they have failed, they are now in the process of starting the preparation to depart but they have still got the application to the minister. Have you assisted in making applications to the minister?

Ms Piper—The Refugee Council does not act on behalf of individuals and RACS is not funded to do this, although I believe that you do—

Ms Cranston—If we have taken on a client, we will certainly look at whether we are concerned that they return. We would consider making a 417 submission, yes, a letter to the minister. We have a pro forma in relation to other clients that we do not act for which gives them information about the humanitarian visa.

Ms Piper—One of our concerns is that those agencies that are funded under the IAAAS are only funded to provide assistance during the administrative stages. Therefore, technically, any work that they do to provide advice or assistance to clients beyond this is done pro bono.

Senator McKIERNAN—It just seems to me that in those circumstances the minister would listen to an argument that had been put forward of torture, trauma and other convention reasons.

Ms Piper—I am not particularly worried about people who have the advantage of assistance from RACS or the other competent advisers, but I am very conscious of the fact that a very large number of applicants are not advised, and therefore not necessarily aware, of what are the relevant arguments to present to the minister.

CHAIR—Thank you very much, Ms Piper and Ms Cranston. You will obtain a copy of the transcript. If you have any comments, please get back to us. We will get back to you if we need any more information. You will get back to us with where you got those figures from, how they were calculated?

Ms Piper—I will fax them through to the secretariat as soon as I get back to the office.

CHAIR—Thank you very much, Ms Piper. Thank you, Ms Cranston.

[12.21 p.m.]

BIOK, Ms Elizabeth Mary, Committee Member, Australian Section, International Commission of Jurists

BITEL, Mr David, Secretary-General, Australian Section, International Commission of Jurists

CHAIR—I welcome the International Commission of Jurists to the hearing today. Do you wish to amend your submission in any way and, if not, do you wish to make a short opening statement?

Mr Bitel—No, I do not wish to amend the submission. We are the two principal authors of the submission. In relation to making an opening statement, unless the committee wishes me to do so, no, I do not.

CHAIR—That is fine; we have your submission. You are very clear in your submission that you think the $1,000 should be omitted. You do not think it has worked?

Mr Bitel—I think the time has come in the review for the fee to be no longer applicable.

CHAIR—Very briefly, what are your reasons?

Mr Bitel—When the fee was introduced, it was introduced as a package of measures, in part to rid the system of abuse. I think that the abuse is no longer a significant feature within the system—

CHAIR—Has this helped to reduce the abuse?

Mr Bitel—That is impossible for us to determine, but I think that the abuse is no longer a significant feature of the system. The inability of people to obtain work permits is probably a more significant feature, but I think another aspect is that the abusers are unlikely to be people who would stay in Australia; they are people who are seeking to extend their stay for the maximum personal benefit and, when their time is up, they leave the country. The abusers are not the sort of people who would be paying the fee. The people who would be paying the fee are the ones who are not the abusers, who had genuine reasons, be they refugee, humanitarian or familial type reasons, to want to stay in Australia.

CHAIR—We have heard that from both Ms Piper and Ms Cranston. Do you actually have any statistical evidence of this or is it all anecdotal?

Mr Bitel—I am a solicitor in private practice specialising in the immigration area and so I have professional knowledge of cases, which I suppose is anecdotal. I do not have statistical evidence in that I cannot present to the parliament statistics which have been accumulated by me over a period of time, but I can certainly give anecdotal and client-based evidence of situations where this sort of issue has arisen.

Ms Biok—I am a practitioner with the Legal Aid Commission and in that role I provide a lot of advice to people who are seeking immigration status in Australia. I think that in the period that the $1,000 regulation has been in operation there has been a significant shift in the nature of processing by the departmental officers of primary applications for refugee status. Because of that I think there may be more people who are now appealing to the Refugee Review Tribunal and I do not think that the $1,000 fee is in any way removing people's desire to go to the RRT—in fact, the change in processing has encouraged people to go to the RRT. Along with that we have had a major restriction in the amount of free legal advice and assistance that has been provided through legal aid commissions nationally in Australia. That is encouraging people to go to places where they get advice which often is not correct and the $1,000 fee in fact may not be raised with them. I see a lot of people who have been advised to put in applications, to run them at the Refugee Review Tribunal, but had they got proper advice in the first place they would have been encouraged not to do so.

CHAIR—The department of immigration claims that, if you divide countries into those that tend to produce legitimate refugees and those that do not, in those countries that do tend to produce refugees there has not been a decrease in the flow-on rate but there has been in those countries where we would not expect to find refugees. They claim that their figures support the fact that this $1,000 fee is working. Do you have any comment on that?

Ms Biok—My anecdotal evidence, related to the sort of people I see on the legal aid advice roster, would not indicate that that is the case. There are a lot of people coming from countries which are known not to be refugee producing countries who are being encouraged to go to the RRT and who have no concept of the $1,000 fee. They go to the RRT because they wish to extend their stay here. I would agree with what Mr Bitel has said: that those people tend to be people who do not want to return to Australia. When you say to them, 'If you wish in the future to lodge an application for a visitor's visa or to migrate as a member of a family,' they say, 'I do not intend to.'

CHAIR—So what you are saying is there are some people to whom the $1,000 has not been a deterrent, despite the fact that they know from the outside that they are not legitimate refugees? What would you suggest that we do to deter them?

Ms Biok—Provide more legal advice and have a more stringent departmental processing system where people are given full opportunities to voice their claims, where they are interviewed, where people understand at the end of the departmental processing that they are not going to come within the Refugee Convention and why not.

CHAIR—But surely if the reason that they are going through the process is to obtain more time to work here, then all the legal advice in the world is not going to change that because they know that by making an application and extending their time they can actually work. These are the non-legitimate people: they know what the system can offer and they are deliberately abusing it. So legal advice is not going to change that.

Ms Biok—I think there is certainly a role for community education and letting people know that they can go somewhere for a second opinion. A lot of what we used to do at legal aid, when we ran a comprehensive aid service, was to give second opinions. People would come in saying, 'I've been to a migration agent who has said that for $5,000 they can

continue my application.' We would say to them, 'Excuse me, this is the Refugee Convention. You do not come within those grounds.' That facility is no longer available to people.

CHAIR—And you would agree with the comments that the migration agents are sometimes the reason why we are getting some unfounded claims?

Ms Biok—Yes, I would.

Mr Bitel—I would also say not only migration agents but non-registered people giving immigration advice. In my experience, the larger element of fraud comes not from the migration agents, but from the movers and shakers out there in the community, the people who are glibly telling people that they know what to do. They are the people who are largely conning many innocent people. One has only to look at the numbers that have been struck off by the MARA. They are not substantial, but one should look at the people the investigations have been pursuing. Abel Miranda is a well-known example in Sydney. He was never licensed, but certainly many hundreds—and it may well run into thousands—of Filipinos, Thais, and people of other nationalities made applications for protection visas and appeals through the RRT with his so-called advice.

CHAIR—Would community information have stopped this?

Mr Bitel—As a practitioner, I have a fairly substantial practice with people from the Philippines. I have seen many people who have come to me at the end of the road. When I have confronted them with what it is all about they are really quite flabbergasted. They never realised—and I say that quite genuinely—what they were doing. They thought that what they were doing was acceptable. The minister made a speech to parliament—I think it was in March 1997, before these measures were introduced—where, in answer to a question, he talked about the fraud which was perpetrated by members of the community. I have a copy of that speech which I show to people—it runs to about a page and half of the *Hansard*. The reaction that you see amongst people is really one of embarrassment, shock and amazement, because they did not consider what they were doing to be an abuse of the system.

I know it is fairly convenient to say that people are abusing, but you have also got to say that people thought that this was the appropriate way to proceed and really had no great intention to abuse the system. That is perhaps a sweeping statement and, of course, there are some who did, but I am just passing an anecdotal observation from people that I have had some experience with.

Senator BARTLETT—There are a couple of aspects on which I would like you to comment further. Firstly, as was asked of the previous witnesses, one of the issues we are looking at is whether or not specifically the $1,000 fee has deterred inappropriate applications. That is a matter of judgment, but from the other perspective it is trying to judge whether or not it has actually caused extra hardship. Given that you are involved in practice directly with people, have you had direct experience with hardship caused by this fee?

Mr Bitel—I could give you an example of a case which passed through my office just recently of a young Filipino lady in her early 20s, who probably would have been under 20 at the time the original application for a protection visa was lodged. She was married to an Australian, had a child with him. She went back to the Philippines when the 417 appeal was refused by the minister and lodged a spouse visa application with the embassy in Manila. It was approved within three months. She came back to Australia, but of course before she could return she had to pay the $1,000 fee. That imposed substantial financial hardship on that young family, in their early 20s, with a young child. The additional fees associated with the wife going back to the Philippines, the travel expenses for two people—because she had just given birth before she went back so the baby had to go with her. That is a direct example of a case. She is probably back in Australia by now. The application would have been approved early in February.

Ms Biok—Can I give the committee a similar example. I have had a family of Sri Lankan refugee applicants and I would class them as genuine refugees. They have now been approved. The parents were here, the father was very severely traumatised after extensive torture at the hands of the Sri Lankan police. Their case was rejected very quickly by the department and went on to the RRT. As their legal representative, I had to inform them of the $1,000 fee. At this stage the father was working in a factory, the family was finding it very difficult to meet their financial needs and it did cause them incredible concern. As we prepared the RRT application and prior to the hearing I had to convince them again and again that if they were successful they would not have to pay the $1,000. In fact, in their mind it had almost become that the $1,000 was an application fee that you had to pay because they were so confused and distressed that they just were not listening carefully.

I wonder how often that happens, especially with people who are not provided with legal representation and without interpreters to clarify those issues. It is my concern that, in fact, it is the traumatised refugee who does not hear these things and for whom the $1,000 just becomes an impossible amount and who may be deterred from applying to the tribunal.

Senator BARTLETT—One of the other issues you raised in your submission relates to procedural fairness and people having extra incentive to apply to the tribunal because they feel it is their first time to actually get a fair go, if you like. Can you explain in a bit more detail why the primary determinations do not comply with procedural fairness any more and whether, if that occurs, that would necessarily lead to a decrease in unmeritorious applications.

Ms Biok—The vast bulk of primary applications are now done on the papers. People are not interviewed, people often are not provided with sufficient time in which to submit all their documents, especially if they need to get translations and especially now that there is limited legal assistance and advice available. Because of that people are often getting a decision within a few months. They look at the decision. Nobody has ever explained to them what it means to be a refugee, what the elements of the convention are and why you need to have a link with the convention grounds. They do not understand that; all they know is nobody has ever listened to them. It is not until they go to the tribunal that they actually get letters which say, 'You are going to have a hearing; do you want to have witnesses?' It is the first time they are given the opportunity to comment on adverse information; it is the first time that somebody puts to them evidence which could be used against them. So, as far

as a lot of refugee applicants are concerned, the RRT is the first time that their case is really being determined at a personal level.

Dr THEOPHANOUS—Why do you say that is actually unfair procedurally?

Ms Biok—Because there is no opportunity for people to put in a comprehensive, full application and there is no opportunity for them to answer any adverse information. The requirements of natural justice indicate that the decision maker must give an indication of why they intend to reject the application and provide opportunity for comment by the applicant. That does not occur now.

CHAIR—The department of immigration informed us that at the primary stage, if there is any adverse information, the applicant is given the opportunity to comment on that.

Mr Bitel—Can I give you one case example in relation to that? Section 57, I think, is the natural justice section of the act, if you like, that the department applies. The department's interpretation of that section is very narrow and one particular case example that I am again involved in involves a claimant from Jordan—I do not want to go into it in too much specificity because the case is still before the RRT. The case was delayed substantially, at the primary stage, and I suspected it was because the department was seeking information in relation to the nature of that person's claims through the Australian embassy in Amman.

I wrote three letters to the department saying, 'If you are making inquiries relative to this person's claims, pursuant to section 57, please give me details of the response so that I can make submissions.' The department ignored me, did not even acknowledge any of my three letters. The application was refused. When I got the refusal and read it, there it was: it was refused because the embassy in Amman had made the following specific comments in relation to my client. I then lodged a formal complaint about that and I got the standard response: section 57 only relates to particular claims and the inquiries were of a general nature in relation to the nature of the claims and therefore they did not feel that they had to give the applicant any comment. This was a case which had been in the system for a while, where there were specialist reports. There was all sorts of information which had been given. He was never interviewed.

CHAIR—I think we will raise that. We will be seeing the department of immigration again towards the completion of the inquiry and we will raise that matter with them, exactly as you have presented it to us today.

Mr Bitel—I could hand the committee details of it, but, again, I am a bit hesitant to do so because the case is still before the RRT and I think the matter will be listed for hearing in the tribunal later in March or early in April.

CHAIR—I think the general principle of what you have told us has been adequate. Senator Bartlett, do you still have questions?

Senator BARTLETT—Yes, just one more point I would like to pursue briefly in relation to the suggestion that it may breach our international obligations. That is a view that

is often raised in relation to a lot of areas. Something I have always wanted to clarify is this: while we can always have interesting legal debates about that, is there any mechanism for actually determining this and does it actually make any practical difference?

Mr Bitel—I am not quite sure that I follow the question. Australia has obligations under the Refugee Convention—

Senator BARTLETT—But there are legal arguments. As with anything, someone can say, 'This breaches our obligations,' and someone else says it cannot and the department obviously says it does not. Is there any mechanism that actually does determine conclusively and legally that an international obligation has been breached?

Mr Bitel—Of course, you had the decision of the Human Rights Committee that related to the detention issue. Notwithstanding the unanimous view of the committee, Australia said, 'We don't accept that that is the international regime.' I do not believe that there is a jurisdiction to take it to the International Court and I do not think there would be a jurisdiction to get an opinion from the Australian High Court.

Mr BAIRD—Just a quick question. When you give a copy of Minister Ruddock's speech to various people who come before you and they are not aware of fraud, et cetera, what types of activities are they getting up to that constitute the fraud?

Mr Bitel—The minister's speech was in response to a question and he said that the people were abusing the system to obtain extended periods of stay in Australia, work rights and other benefits—Medicare, et cetera. He said that it was basically designed to encourage non-genuine asylum seekers, manifestly unfounded asylum seekers, from lodging applications. As Ms Biok has said, most of these people had no idea in the world what a refugee was or that they were seeking to access Australia's protection under the Refugee Convention.

Mr BAIRD—So they had gone to some of the people you are talking about—

Mr Bitel—They have gone to people, Mr Baird. As soon as a Filipino walks into my office and says, 'I'm on a bridging visa,' you know that they have applied for a protection visa. They have not the faintest idea what they have applied for, have not the faintest idea what a refugee is. Nobody has ever explained it to them and all they think is that a bridging visa is a legitimate means by which people can obtain extended stay in Australia. That is my experience. Now, of course, I do not condone it—do not think I do—but that is just the experience which I have come across.

Mr BAIRD—I understand. Thank you.

Dr THEOPHANOUS—In relation to the procedural fairness for primary decisions, is it your view that the responsible officers of the department believe that it is the view of the government that it is better to reject people and then we will see what the tribunal says, rather than to make positive decisions themselves?

Mr Bitel—Can I say several things. Firstly, the convention requires that applicants be given the benefit of the doubt. There is very little jurisprudence that I am aware of in Australia on what that actually means and how it is to be applied in practice. The way that I would interpret it is that, if you think the person might have a claim, you let the person stay; you do not say no. With all due respect to the department, I think the department's approach is: if there is the slightest doubt, you refuse them. A person has to prove their case to a criminal onus. Now, you do not use the criminal and civil onuses in this area, but that is a fairly good example. Can I also say that—

Dr THEOPHANOUS—Why do you think they have that attitude?

Mr Bitel—One of the things that I have been formulating in my own mind, and it is my personal view—it is not the view of the ICJ or any of the other organisations that I represent—is that whilst you have got Immigration, which is responsible for the entry and control of people coming into Australia, administering a convention which is designed to give protection, you have got a conflict of interest. My personal view is that Immigration should not be administering the convention, that it should be administered by a different department.

The only department that I can think logically which could be doing it where there would not be a conflict is Attorney-General's. That is an idea that I have had for some years and there have been some discussions amongst community people on it. But there are pros and cons and it is not something which is settled and therefore I cannot say to you that it is an ICJ submission, or indeed a Refugee Council submission—because, as you know, I also from time to time wear that hat. It is something that members of the committee might like to give consideration to. And I think that is the reason: you have got the control mentality. You have got a minister who, for very proper reasons, is concerned about abuse and the integrity of the system, and you have got departmental officers who are charged with administering a system where the minister in almost every public pronouncement says he is concerned about the rorts.

Ms Biok—I think that part of this problem has now been created by the time constraints that are being placed on departmental officers, or that is certainly how it appears to me as a practitioner. Previously it may have taken perhaps four to six months for somebody's application to be determined at the departmental level with an interview being arranged, with the opportunity to make submissions after the interview, with the departmental decision that could then have further comments made. That no longer applies and we are now getting a decision within perhaps eight weeks. All that that has done is shifted the delays from the departmental level where they were occurring before now to the RRT. Whereas previously you could get a hearing for a client at the RRT within six months, we are now looking sometimes at two years before a matter can actually get before a member.

Dr THEOPHANOUS—I see. So all we have done is shift the thing from the department to the RRT.

Ms Biok—Yes.

Mr Bitel—Dr Theophanous, can I just make another point which I did want to make before, and that is in relation to the deficiencies as we see it of the primary stage process. As you would appreciate, sitting on that side of the table—or the bench, as lawyers would say—it is very important not only to read what the person says but to see them, to see how they present it, ask them questions about what they have got and see whether there is something else that they are afraid to say or they did not realise was appropriate.

Some of you may know that I sit as a judicial member of the New South Wales Equal Opportunity Tribunal which hears cases of complaints under the Anti-Discrimination Act. We get cases coming before us for four, five, six, 10, 21 days, arguing complaints, very properly, of discrimination and whether or not it is unlawful. Twenty-one days to hear an argument on a question of discrimination. I do not comment on that. You get a criminal trial and that can go on for a very long period of time, to determine the innocence or guilt of a person. Here you are dealing with a life and death question of whether or not a person, if a refugee, will be returned to their country where they will be tortured or killed or whatever, and yet that question, which has to be one of the most fundamental and important questions which is being decided, is being decided by a single person, not a jury, on the papers, without an interview. I question that.

Ms Biok—Often we are dealing with family groups where the husband and wife both may have their own specific claims. In fact, the husband often does not know what the wife's claims are: there may in fact be claims of sexual assault or intimidation that the wife has kept secret from the husband. Unless somebody is interviewed, unless the woman is given a chance of a separate hearing, of a confidential hearing with an interpreter, those claims may never come out; they are not going to occur on the papers. Women who are traumatised because of their past experience are very reluctant to have those things written in legal statutory declarations.

Mr Bitel—Where the application is made by the husband, as the principal, who may well be partially responsible or who is not aware of it—

Dr THEOPHANOUS—That is a very good point. Another matter that came up in earlier evidence concerned those people who may not, strictly speaking, meet the convention criteria but who have some kind of humanitarian or compassionate claim but have to go through this stream now in order to access the minister. Do you have any proposals in relation to how that matter could be fixed up, or at least where we would not necessarily have to go through almost a charade of a process of the RRT in order to put alternative claims to the minister about protection?

Mr Bitel—The proposal I would like the members of parliament to consider is that we reintroduce a mechanism for the consideration of certain matters. I hesitate to use the words 'strong compassionate' or 'humanitarian grounds' because I know that those words do not carry much favour, but the regulations in 1990 were able to adopt a terminology of 'extreme hardship' or 'irreparable prejudice' and that particular class of visa seems to have gone by the wayside.

It seems to me that it would not be too difficult for the department to reconstruct a visa category based on that terminology, which has had judicial definition, and there could be

ministerial guidance for the interpretation of it through a ministerial policy statement which would enable people to have their day, to be considered on non-refugee but humanitarian or compassionate, to use the lay terminology, grounds which would then enable them to be considered. If they want, they could then have their day before the minister under his non-compellable discretion under section 351. That is the guideline.

I cannot be accurate on this, but it is my understanding that Australia is one of the few countries in the world which has no such onshore provision and, given that we do not have that provision, it is the only way that people can access the ministerial discretion if they want to be heard, to go through the refugee process. It is an abuse of the process. I certainly do not like it, and it is one that should be discouraged. We are bastardising the term of a refugee by saying to a person, 'If you want to access the minister's discretion, you have got to go through the refugee process.' It is not the way to do it and, indeed, as a practitioner under the migration agents code of conduct, I have a problem because I cannot encourage the lodgment of a non-bona fide application.

I had an experience of this some years ago. I had a person who came to me who I thought was not a refugee and I said, 'You can't apply.' There was nothing else he could do. He wanted to get to the minister, so what does the person do? The person has to lodge an application. I cannot represent him because if I do so I am breaching this code of conduct, but on the other hand that is the legitimate way of getting to the minister. It is a real conflict.

Dr THEOPHANOUS—Has the ICJ made any proposal to the minister in recent times about amending the system in this way?

Mr Bitel—No, the ICJ has not made an official proposal on that, although we have been a party to general calls for a committee to look at the whole process. You may be aware of the Law Council's letter to the minister following the S.E. case, which called for a general inquiry—

Dr THEOPHANOUS—I was actually thinking of that. You signed that letter, did you not?

Mr Bitel—Yes.

Dr THEOPHANOUS—And that was to deal with this as well?

Mr Bitel—That was one of the issues which certainly I had in mind to be considered by the committee that would be looking at it. The minister's response was that he did not believe it was necessary, I think.

Ms Biok—There is also another situation that people may find themselves in, which is a genuine humanitarian situation—and the RRT is powerless to deal with this—of people who are stateless. Somebody may have lost their nationality because of their country's nationality law. They are in Australia, they may have made connections with members of the Australian community, they may in fact have had children in Australia. They cannot be refugees because there is no clear act of persecution, let us say for argument's sake. That could be

something that somebody could apply for under a special visa category because they have nowhere else to go, they cannot return to their country of former habitual residence or previous nationality.

At the moment, there are decisions from the tribunal where they have found that X is stateless but there is nothing they can do and that goes to negotiation between the government and the current department of immigration and the Attorney-General's Department here, and that can be a very long-term process. I have one Indonesian client who is in that situation and she has been waiting now for 2½ years. She cannot return home.

Dr THEOPHANOUS—I had a case like that myself. The department said yes and then changed its mind, saying it would set a precedent.

CHAIR—Ms Biok, just before the deputy chair asks his questions, you implied that being stateless would be perhaps a reason to allow people to stay. Unfortunately, in the world at the moment we have approximately 25 million stateless people. Were we to adopt such an attitude, surely this would be suggesting that if you can get to Australia and you can show that you are stateless—

Ms Biok—By stateless I am referring to the fact of somebody who had a nationality and their nationality was then taken from them by their government. For example, with Indonesians, if you are out of Indonesia for more than five years and you do not report annually to your consulate, you then cease to be an Indonesian national.

CHAIR—But for whatever reason, there are 25 million—or more probably by now—stateless people in the world who are under enormous suffering.

Mr Bitel—It does raise an issue though. It raises an issue of Australia's obligations under the convention in relation to stateless people. We have signed that convention and so we do have obligations, which I do not believe are incorporated into our current legislative regime, and I think that they should be looked at. There is another convention as well which we have also ratified and that is the convention against torture. Our Migration Act does not properly reflect our obligations under that convention as well.

Senator McKIERNAN—Ms Biok, your reference earlier to delays in decisions at the RRT was incorrect. Decisions are actually coming down a lot quicker now than they have previously. Again, I can accept some of the blame for that because this committee and other committees pressured the government to get speedier decision making out of a tribunal that was set up to make speedy decisions.

I will just give you an instance of what I am saying. In 1995-96, the average was 285 days for a tribunal decision; in 1996-97 that went to 256; in 1997-98 it went to 177 days; and so far, in the first half of this financial year, it has gone down to 55 days. So it has dramatically decreased and what you said earlier was incorrect.

Ms Biok—My concern is that that is averaging out delays. I know the tribunal tends to deal with countries that are seen as non-refugee producing very, very quickly, but it is my experience that people from countries which are known as refugee producing, such as Burma

and Sri Lanka, are waiting two years before we get to a hearing. So I think that the statistics may reflect that the tribunal is moving through some very quickly, but others are being delayed.

Senator McKIERNAN—I accept the qualification you put on it but I will take you back. There have been cases in 1995-96 where there were long delays in decision making as well, and in earlier years, but on the whole, as one level of measuring, the figures are there and the tribunal is operating more efficiently, in my opinion, than it had previously been operating.

Ms Biok—I would still argue that for those countries where there is adverse information that needs to be put to an applicant, where there is a hearing, where there are to be witnesses, where it may be a full day hearing, they are still taking quite a lot of time.

Senator McKIERNAN—In some instances, most definitely, yes, they are. We had the tribunal in front of us in Melbourne last week and they told us something that quite startled me: the number of occasions where people do not front the tribunal. Can you offer explanations for that?

Ms Biok—I think they are people who do not really understand what the tribunal is about, who have just lodged their application because they want somebody to listen to their case, and when it gets to a hearing date, they do not understand. They have not been properly legally advised and so they do not appear.

Senator McKIERNAN—The representation before the tribunal, by advisers or agents or friends in some instances, is only 20 per cent. Do you have a view on that, or Mr Bitel?

Mr Bitel—I think that in some respects, and I do not wish to speak for her, but the perception that Ms Biok sees is a little skewed because she only sees the genuine cases, the difficult cases. They are the ones who legal aid has the obligation to see and represent. My understanding, perhaps from seeing a broader perspective of the community, is that the RRT has a prioritisation in terms of the cases with which it deals: it deals with cases of trauma, it deals with cases of detention, and it also expedites the processing of the manifestly unfounded cases.

The statistics that you would be quoting from would include the very heavy skew of the large number of Sydney cases, of the Filipinos, the Tongans, the Thais, the South Koreans, who lodged their applications in those extraordinary years of 1995, 1996, 1997, which have now flowed through to the tribunal and are reflected in the statistics. So you have got a heavy statistical bias showing that those cases were processed very quickly, as against those cases which do stay in the system longer because they involve cases of claims which have to be more thoroughly investigated.

I think my observation is similar to that of Ms Biok, that the cases where there is a meritorious claim which requires investigation do take longer and it is not uncommon for those cases in the RRT to take a couple of years before you get to a hearing. On the other hand, the manifestly unfounded cases, of which there was a large proportion, are weeded out very quickly. That is the reason that the statistics will show faster processing, if you like. It

would be interesting to ask the tribunal the question: what is your average processing time of, if you like, Sri Lankan cases, or Burmese cases?

Senator McKIERNAN—I have got a problem in doing that. I do not necessarily accept the argument, and it relates to an earlier argument we had with the department, that there are 'refugee producing countries' and 'non-refugee producing countries'. I take the view that people can come from 'non-refugee producing countries', and all applicants should be dealt with individually and on their merit. I do not accept, for example, that automatically a Rwandan will necessarily be a refugee or, indeed, that a Somalian will necessarily be a refugee.

Mr Bitel—Indeed, I would agree with you completely because I am aware of a case involving a Filipino—and I may have mentioned this to you previously, Senator—who made a claim which was refused. He went back to the Philippines and within three months was murdered by the people he had feared. He was a senior electoral officer in the Philippines and his claim was refused on the basis it was manifestly unfounded, but he and his three-year-old son were killed within a couple of months by the very people, because he was performing his functions as a senior public servant. So there are cases of Filipino—

Senator McKIERNAN—We are actually in agreement with each other, to a point.

Ms Biok—If I can just make a recommendation for the tribunal, something the tribunal has started doing in the last year which I think has been very worthwhile is sending out a request for hearing form, which they are sending out when they are considering going further with the case and whether it actually needs to go to a hearing and whether the people are actually interested, whether the applicant is still in the country, whether they wish to pursue the case. In my experience, speaking to tribunal members, that has tended to weed out a lot of people who have lost interest in their case, and in fact it highlights those cases where people have actually left Australia. I think that has been very worthwhile.

Senator McKIERNAN—The 45-day rule is not under review here, but I am just wondering now, with the evidence that has come to the inquiry, if perhaps we might have made a mistake in agreeing to the 45-day rule at the time in focusing on the manifestly unfounded cases only, not on the genuine cases or those marginals. I am approaching it from this point of view, and I am offering it to you to shoot down in flames, that individuals from a country—and I will not nominate which country because of what has been said earlier—come in here on a tourist visa. They survive on the tourist visa for 40-odd days but before the expiry of the 45th or the 46th day they have incentives offered to them which they do not already have: the right to work and the right to Medicare. Possibly we have made a mistake in putting that provision in there or in extending the period of time where individuals are thinking that they can remain in Australia with those additional benefits to them.

Mr Bitel—Take the mythical country, P. The embassy in that country P has realised this and, very cleverly, I have observed, gives people visas for three months.

Mrs IRWIN—Is it an 8503 or something?

Mr Bitel—Sometimes they have an 8503, but that does not prevent the lodgment of a protection visa application. They give a visa for three months, or indeed six months, but not one month as was often the case previously. The person has to lodge their protection visa application within 45 days to get the work permit. If they apply within 45 days the department will refuse that application within a week. They then have to lodge an appeal. The appeal has to be lodged within 35 days, so they are before the RRT before their visa has effectively expired. The RRT is expediting the processing of applications from country P and will usually deal with them within the 50-odd days that you have mentioned.

At the end of that period, what they will have secured will have been a work permit which does not come into operation until after their substantive three-month visa has expired, to permit them to work only whilst the RRT is considering it, which will be for a couple of months, not more, and then they have to pay $1,000. Not many people want to take advantage of that; it is not considered to be particularly generous.

Senator McKIERNAN—If the individual is working in that period of time—

Mr Bitel—But they are not working; they are only working after their substantive visa expires.

Senator McKIERNAN—Okay. I am told the tape has only got five minutes to go.

CHAIR—It is probably three by now.

Senator McKIERNAN—We may have to put another one on. The other question relates to the international obligations, which you have dealt with, but which we, quite frankly, have not dealt with properly. The department argued that we are not in breach of our international obligations and they have taken legal advice on this from the Attorney-General's Department. We have asked for a copy of that advice; it has not been provided, if it is going to be provided at all. Part of the argument on whether or not it is in breach is that the $1,000 fee is applicable after the event and not before the event. Does that influence your views that you put in your submission?

Ms Biok—Certainly, I would say that the primary decision making process, as it currently stands, is in breach of our international obligations under the Refugee Convention. The Refugee Convention is an individual based convention where an individual's claims should be put forward and listened to, and that is not happening. So in that sense we are not looking at the burden of proof; we are not giving the refugee applicant the opportunity to fully explore their claims. I think in that sense we are in breach. In terms of the $1,000 fee, I think we are in breach because it is a fee that only applies to migration applicants at the Refugee Review Tribunal. It does not apply to people at the IRT. It does not apply to people the AAT. It is something which is specifically geared towards refugees. I think in that way we are in breach of the Declaration on Human Rights.

Senator McKIERNAN—And your mind is not influenced by the fact that it is imposed after the event rather than prior to the event?

Ms Biok—Because it is singling out a specific group that is applying for a certain sort of convention, a certain right, the right to remain and seek asylum in Australia.

Senator McKIERNAN—Why has this not then been challenged before the Human Rights Committee? I am sure it has gone through the process now.

Mr Bitel—I guess, firstly, a challenge is only made when a person presents who wants to make the challenge. Secondly, how does the person maintain their lawful status in Australia with a challenge before the Human Rights Committee? They cannot get a bridging visa, as I understand it, whilst that challenge is being determined. I am not aware of it being challenged; it may have been.

Senator McKIERNAN—I do not even think it is being challenged; I think we probably would have heard if it was. The case which you referred to before managed the challenge, to a point, but left the country long before the decision. Related to this, though, is Canada, which is probably a country we can compare ourselves against. They have got what is known as a landing fee. It is a fee by a different name in my interpretation, and of course the Canadians would probably come down on me like a ton of bricks for saying that. Are you aware of that?

Ms Biok—No, I am not.

Senator McKIERNAN—Mr Bitel?

Mr Bitel—No.

CHAIR—Thank you very much, Ms Biok and Mr Bitel, for appearing before us today. You will receive a copy of the *Hansard* transcript. If you have any questions you can get back to us and we will get back to you. I believe you were going to get some information for us. Is that correct? Have we asked you for some information?

Mr Bitel—No.

CHAIR—You escaped; we asked all the other witnesses.

Mr Bitel—I mentioned a case—

CHAIR—No, I think you made the general point. Thank you very much.

Resolved (on motion by **Mrs Irwin**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 1.08 p.m.