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JOINT COMMITTEE ON MIGRATION

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WITNESSES

ILLINGWORTH, Mr Robert, Branch Head, Onshore Protection and Review, Department of Immigration and Multicultural Affairs 97

SULLIVAN, Mr Mark, Executive—Deputy Secretary, Department of Immigration and Multicultural Affairs 97

Committee met at 8.21 p.m.

ILLINGWORTH, Mr Robert, Branch Head, Onshore Protection and Review, Department of Immigration and Multicultural Affairs

SULLIVAN, Mr Mark, Executive—Deputy Secretary, Department of Immigration and Multicultural Affairs

CHAIR—I now open the third public hearing for the committee's inquiry into migration regulation 4.31B. This regulation imposes a $1,000 fee on unsuccessful applicants to the Refugee Review Tribunal. It was introduced on 1 July 1997 along with other measures that were designed to curb abuse in the refugee application process. In introducing the regulation, the government undertook to ask the Joint Standing Committee on Migration to review the provision at a later date. This inquiry is in response to that undertaking. During this inquiry the committee has examined issues such as the fee's impact on genuine asylum seekers, its effectiveness and the possible alternatives.

At this hearing, the committee will hear again from the Department of Immigration and Multicultural Affairs. This should enable the committee to obtain the department's perspective on issues that were raised in other submissions and by witnesses in the Melbourne and Sydney hearings. If you would like further details about the inquiry, feel free to ask any of the committee staff here at the hearing.

With these remarks, I turn to the proceedings at hand and welcome witnesses from the Department of Immigration and Multicultural Affairs. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Mr Sullivan—No, thank you.

CHAIR—Before we ask you some questions, would you like to make a statement?

Mr Sullivan—I would not like to make a long statement at all. We will lodge a supplementary submission tomorrow morning; I apologise, it was very close to being lodged tonight. In that supplementary submission, we will meet all of the commitments we made at the last hearing in respect of questions that you raised and commitments that we gave.

We are pleased to be back and pleased to assist the committee in any way we possibly can. We do believe the committee's hearings have been worth while. We do believe that the hearings have offered us the opportunity to show that the package of measures introduced by the government on 1 July 1997 to curb the abuse of the protection visa system has been shown to be effective. In relation to the separation of the $1,000 post-decision fee from the other measures in that package, we say that we cannot show the clear separate effect of one part of the package as opposed to other parts of the package.

We do believe that we have been able to demonstrate that the package has not harmed the genuine asylum seeker. We do believe that, despite the package, there continues to be a scale of abuse of the protection visa system. We do believe that the $1,000 post-decision fee is the proper implementation of a user-pays principle in the context of a refugee process. We do continue to assert and believe that the fee in no way constitutes a penalty but is a fee, and that we would not wish the fee to be in any way turned into a penalty. We think the fee is at worst neutral but more reasonably should be seen as contributing to the package of measures which has had a good policy impact on the protection visa system as we know it in Australia today. We are happy to answer any range of questions.

CHAIR—Thank you, Mr Sullivan. I note that the department has sent us a number of graphs. In fact, you have listed every possible country—including, for instance, countries that have had only one over the last year. I must say I did go through these—I looked at them very carefully—despite the fact some of the later graphs actually did not show up the line of the percentage that was reviewed. I looked through them very carefully, and I could not find the evidence that, amongst what have been known as non-refugee producing countries, the percentage applying for review has gone down; nor, on the other one, that it maintained the ones that are. And I did look fairly carefully for that.

Your very first graph, which was the 'all citizenships combined', shows that something has had a huge effect on those applying for the primary—which has gone totally down—and, as a consequence, the numbers that are applying for review. However, if you look at the top line, the percentage that are applying for the review has remained almost constant. I think that graph speaks for itself.

There is no doubt that there has been an enormous change in the number of primary applications, but that graph seems to me to confirm that there has been little if no change in the percent who are rejected who then reapply for review. Other members of the committee may disagree with that, and they will have their own chance to make that statement. Certainly, on my reading of it, Mr Sullivan, that is what that graph on page 1 says to me and, having looked through all the other graphs, I have failed to find anything to convince me otherwise. That is how I feel about it, so perhaps you might like to respond to that.

Mr Sullivan—I am not going to enter into another debate about the graphs. We believe the graphs indicate it, but we do say you have to look at the package. We would say the $1,000 post-application fee for the RRT is part of a package which has, as you would say, its most manifest impact in primary applications lodged. That, in itself, says that this range of measures is probably being more policy effective and is actually deterring at the primary stage and not just deterring those from moving from primary to review. We said the policy objective was to remove from that case load as much as possible those who we said abuse the system. Without going over that again, it was those people who were entering a protection visa stream knowing that they were not refugees or unaware of what they were even doing but who were there for the purposes of gaining the benefits that being a protection visa applicant in this country gives.

To say, 'Obviously, something has had a major impact on primary application rates,' and then to say, 'But I debate whether review percentage rates have really changed'—certainly, at the all citizens level they have not and that reflects the statement I made earlier that we

believe there continues to be high scale abuse in the system. We think the individual country graphs do show some indication—and, again, I want to be much more careful here than I probably was in Melbourne—that countries which have a propensity to produce refugees have their rate of refugees flowing from primary to review remaining extremely stable, if not rising. The rate from countries which do not have a great propensity to produce refugees, whilst saying that they can, is remaining stable, if not falling. I think to a degree that, to say this measure is not working, there is some onus of proof to show that the effect is harmful.

What the graphs are showing you is that it is hard to detect harmful effect. What the package of measures is showing you is that we seem to have agreement that something after 1 July 1997 has produced a marked decrease in primary application rates and has a debatable impact on what is happening at review. Simply I would say that, to make my case, I do not feel I need to fall back to argue the fine detail of the review rates, other than to say I cannot find harmful impact.

When I look at the submissions that have been put to you and I look at the evidence that has been placed before you, I find that most people and most groups who are arguing against this measure are arguing very much on exactly the same basis that they argued the initial measure. I find very little argument which attempts to show evidence, other than some anecdote, that the measure has actually had a deleterious impact.

CHAIR—But surely you could not do that other than by anecdote, unless the department itself had undergone a survey of all those who did apply, as well as those who did not apply at the primary stage to find out why they did not apply at the primary stage. That would be extremely difficult because you have a negative constituency you do not know how to access. For those ones who did apply at the primary but who then did not apply for review, you would have to have some statistics about that, otherwise we are confined to anecdotal evidence.

Mr Sullivan—I think we have been providing so many statistics. People are looking at these statistics and they want to say, 'What is happening to the Algerians or the Iraqis?' And I think we have solved the problem of different numbers.

CHAIR—Mr Sullivan, I think we went through that before and we found statistics that could prove either case. If we go through that again, we will show it again. We could pick out individual countries and one country would prove that, yes, perhaps it is having a positive effect and another one would show otherwise. So I think there is different evidence there, depending on the graphs. Could you look at your 'all citizens combined' graph and tell me what you would expect to see on that graph if we discontinued the $1,000 fee?

Mr Sullivan—If you dismantle the package in any way, I think you have a high probability of seeing a further increase in the primary rate and probably some variation in the review rate. But how much, I have no clue.

Dr THEOPHANOUS—On what basis do you say that?

Mr Sullivan—Because I have not heard anyone, other than the chair, saying that it is apparent this package of measures, or something out there in the ether of which I am not

aware, has had a market impact on primary application rates. I believe that the market impact on primary application rates has come from the package of measures that the government introduced in 1997, of which this was one element.

If you dismantle the package in any way, if you take away an element of the package, I would say there is a probability—which I cannot put a number on; I cannot say that it is 0.1, 0.9 or 0.8—of risking the impact. The clear impact is reduction in primary level applications. So I would say that you could easily see an increase in primary level applications, probably more from countries which do not generally produce refugees. Also, I do believe that you could see some instability in country by country rates of review applications.

Again, I do not want to debate it, but this is a proposition which we put, and it is one which some have rejected: apparent from the statistics is a reduction in the flow-on rates from some countries which generally do not produce refugees. We think that the taking away of this fee would leave you with a probability that, firstly, primary rates would increase again and, secondly, review flow-on rates in some countries would go up.

Dr THEOPHANOUS—But you say that you have read the evidence from other organisations, including the Refugee Council, that have come before this committee. Not one of those organisations has supported your argument—not one.

Mr Sullivan—That does not surprise me; they rarely do. For the last 10 years, rarely have they supported government policy in this area, so why would I expect them suddenly to come and say that what the government did was a good idea?

Dr THEOPHANOUS—But they are saying that their anecdotal evidence, or their impressions of what is happening, is quite different from what you have put before this committee.

Mr Sullivan—I think if you scrutinised their anecdotes in the way you scrutinise my data, it would prove otherwise; it would prove that they do not have a basis on which to say that. If you were to show me in the data the harmful effect of this measure, I would think you had a point. Show me someone who says, 'I have been told by a friend that they did not proceed to the RRT because of the possible chance of incurring a debt at the end of the process; and this is bad.' I would think that is exactly what government policy was about.

Dr THEOPHANOUS—You have challenged me to explore that. I will ask you a further question. Your analysis is based on a two-fold classification, whereas the analysis of these groups is based primarily on a three-fold classification: genuine applicants who definitely believe they are refugees; those on the borderline who wish to access the system including, for example, those applying for consideration on humanitarian grounds by the minister—and you would be aware that the only way in which that can be done is through this refugee application process, and that group of people is in no way even considered in your submission; and those who are not genuine.

So there is a conceptual difference between the way those other organisations have analysed this situation and your way which you have put to this committee. That is, you have ignored the middle category—people who are not quite sure that they fit strictly in the

refugee definition but who have genuine concerns and genuine humanitarian claims in relation to their status. According to these organisations, it is this group of people who, because of the fee, may be discouraged from applying or going to the RRT.

Mr Sullivan—It is not the department that makes this policy, but I would respond to you in this way: in 1989 the government of the day—you were part of it and so were others—decided that there would not be an onshore humanitarian program in Australia. We would accede to the convention and we would determine whether or not persons were convention refugees. The courts probably played the biggest role in ensuring that the government of the day believed that that was the way to go. With Senator Ray as minister, the government of the day also decided that a final safety net discretion should be with the minister of the day in respect of his or her power to intervene in cases where review mechanisms had not satisfied their seeking of a visa.

To jump from that position of government to saying that what we are administering is a de facto humanitarian program and that we should administer a de facto humanitarian program, is not what government did then and is not what any government since then has changed its view of policy to be. So we administer from top down: you are a refugee or you are not a refugee. If they decide that the design of the policy of that government being continued by other governments is such that the way you address a humanitarian issue is to go through a refugee claim, that is their decision. There is no way that the imposition of a fee to cover the cost of administration and processing of that application should be seen as a penalty. That is unsustainable.

I think those advocates are saying that the government should have an onshore humanitarian process—the government does not have one. It is not a question about whether it should have one in this legislation; it does not have one.

Dr THEOPHANOUS—But you do have people who apply through this refugee process who are in this situation, do you not?

Mr Sullivan—Yes, and anyone who accesses the refugee stream to approach the minister for intervention, and is successful in that intervention, has their $1,000 fee refunded.

Dr THEOPHANOUS—That is correct.

Mr Sullivan—So it costs nothing.

Dr THEOPHANOUS—But how would they know that they will be successful? They do not know in advance, do they?

Mr Sullivan—A non-compellable discretion, as designed by the parliament of the day, does not give anyone certainty. It is not an application process. It is a process whereby it is open entirely to the minister of the day personally—be it Senator Ray in introducing it, Senator Bolkus, Mr Hand or Mr Ruddock—as to whether they even put their mind to the use of the discretion.

Dr THEOPHANOUS—We are aware of that. But you would be aware also that even people in your own department—not to mention immigration agents and other people—recommend to people in this situation that they should apply in this way. Is that true or not?

Mr Sullivan—Of course it is.

Dr THEOPHANOUS—Your department has sent people to offices—I know they have been sent to my office—and those people have been encouraged to apply in exactly that way because they fall into this situation. If your own department acknowledges that this is an issue, then why don't you?

Mr Sullivan—It is available to anyone to go through the intervention process, as determined in the Migration Act. That requires them—as was designed by the government of the day that wanted it to be as tight as it is—to go through a merits process before even finding out whether the minister will engage in an intervention request.

It would be wrong for us to not advise persons that that is available to them. We advise everyone who fails in a review application that they may access the minister's intervention. It is in black and white. It is the law, and to hide it would be against our duty. Others who believe that is the main game in town threaten the intervention power.

Dr THEOPHANOUS—Are you saying that in no circumstance would the $1,000 fee discourage people of this kind?

Mr Sullivan—The $1,000 fee is not a penalty. It is not meant in any way as a penalty. It is not an application fee for refugee status. It is not a fee to go to the minister and seek his or her intervention.

CHAIR—To reword Dr Theophanous's question, looking at your figures, is it possible that no people have been discouraged from a review by the penalty?

Mr Sullivan—It is possible to assert that on two grounds.

CHAIR—It is possible because we have no evidence to the contrary that people have been deterred from applying for a review because of the fee. It is possible.

Mr Sullivan—Like it can rain tomorrow.

CHAIR—But we have no evidence to say that it has not happened.

Mr Sullivan—You have plenty of evidence to suggest that it has not happened and no evidence to say that it has happened.

CHAIR—No evidence to say that it has happened.

Mr Sullivan—Much more to say that it has not. The weight of evidence is clear. As to the clarity of the evidence, I cannot say.

CHAIR—It is very hard to say that there is evidence when you do not know why people have not done something. Just so we can understand the logic of it, we have seen that the primary application has gone down. I know we asked this question at the previous hearing, but I cannot find your response. For the record, I would like to have it again. Why would that stop somebody making a primary application? If that application is refused, if they decide to go for a review and if they lose the review they would be charged $1,000. Why would that deter them at the first stage?

Mr Sullivan—This is where we get into the package versus the individual measures.

CHAIR—But we are not looking at the whole package. We are just looking at the $1,000.

Mr Sullivan—At the worst days of protection visa processing in this country, if you lodged a primary application you may have had a wait of some 15 months or longer to have that primary application determined. You then had a 28-day period to consider whether you would go to review. That is another month. You then may have waited 24 months to have your review application considered. The cost of that processing was of the order of $5,000 to $7,000. The cost to you was zero. The result was three years plus. The package of measures as now described to you would be that, if you do not put in a claim that has any merit, the likelihood of receiving a decision within one to three months is extremely high. The likelihood of receiving a decision from the RRT within a very short time frame is very high, and you will be charged $1,000.

CHAIR—So you are suggesting one month to three months for the primary. How long for the review?

Mr Sullivan—One month to three months for a non-meritorious claim to the RRT, and you will be hit for $1,000.

CHAIR—On your argument, would that not give them six months?

Mr Sullivan—As opposed to three years.

CHAIR—You were saying that people are accessing this so that they can work in Australia while their application is being processed. Is it not worth it to have six months working in Australia?

Mr Sullivan—In 1995-96 our average processing time was 546 days for both stages of refugee processing. In 1998-99 our average processing time is 96 days.

CHAIR—So 96 days is your average processing time?

Mr Sullivan—For both stages.

CHAIR—What would be your maximum?

Mr Sullivan—I do not know. The maximum could be years. The maximum is the East Timorese case load. It is still going on. You can only work on averages. The advisers that Dr Theophanous talks about as hawking the system around are saying, 'Before I told you 546 days, no cost in terms of application fees, plenty of costs for me but none in terms of application fees and up to two years in the labour market. Then we will see what they do. We will probably take you to judicial review and go on for another couple of years.' This is opposed to three months in the labour market and being hit for $1,000 in a post-application fee if you are not successful. The attractiveness of that product is diminished. Take away the $1,000 and it again becomes a more attractive product.

CHAIR—I would like to congratulate the department on the speediness of the process and how they have sped that up.

Mr Sullivan—It is only government initiatives and policy that allow us to do it, going back several years.

CHAIR—I think we would all congratulate you and approve of what you have done. I still find it hard to understand why the $1,000 is likely to deter people with an evil motive but unlikely to deter people who have a genuine belief. I find that difficult to get over, as I cannot find any evidence in the graphs that show that.

Senator BARTLETT—In your opening remarks you said something along the lines of the onus being on others to prove that there has been a harmful effect. I can understand from your perspective that may be the case. From my perspective, when I am looking at whether or not we should put a fee of $1,000 on people, some of whom do not have a lot of dough and some of whom are not deliberately trying to rort the system, I would like some concrete evidence from the reverse onus of proof to prove that there is not a harmful effect on those people. Is there any component of your department's activities that monitors that?

Mr Sullivan—I think the hundreds of graphs that we have given you do. I am probably retreating from my position that there was clear evidence. When I said that the onus is on others to disprove, it was on the basis that I believe we have put a weight of evidence to you that would lead you to conclude that it has not had a harmful effect, without saying that it is absolutely certain.

The fee structure is designed in such a way to address your issue to a degree. We have not, as discussed in Melbourne, imposed this fee structure in a way which would maximise the actual cash revenue collection. If we did it that way we would say, 'Before you can have a review, give us $1,000 and we'll give it back to you if you are successful.' The design of this fee does not present an up-front impediment to anyone seeking review.

The statistics we showed comparing collection rates to raising rates show that that is not seen by many to be a real impediment at all—that is, they will take a $1,000 debt and they will probably take it to their grave. We will pursue it, but only as a debt. There is no penalty—that is, if you do not pay you do not go to prison. If you do not pay, you do not have an additional penalty imposed upon you. If you do not pay, you owe the Commonwealth money, and it will remain as debt. That design basically gives up revenue to ensure it is not an impediment to process. The accountant in me would say, 'You whack 'em

at the start if you want the money.' You take the $1,000, and then you work through it later. The refugee processor in me says, 'You mustn't unnecessarily impede the person seeking review.'

Having gone through to review and been found to be a refugee, you do not pay a fee. Having gone through to review and been found not to be a refugee but having had the minister intervene, you do not pay a fee. Having gone through to review and having had the court intervene, you do not pay a fee. What we are saying is that, having gone through to review and not having had any of those things occur, a proportion of the cost of processing your review application should be borne by you.

Senator BARTLETT—I presume you would agree that a number of the people who find themselves in that situation—who go through all those processes and dip out—are not deliberately rorting the system.

Mr Sullivan—No. But if this fee were only aimed at abusers it would be a penalty. With this fee we cannot say, 'If you are this sort of an applicant, we will whack you,' because that basically says, 'Let's differentiate and make a second decision about whether or not you are abusing the system.' Once you do that, you are into penalties, you are into another judicial process about saying, 'You got that wrong.' I think the migration agents at the worst end would say, 'Let's have another go to keep you here for three months. We'll take on the courts about whether you should have been charged the fee or not as an abusive applicant.' To be a fee, it must be against the population. You cannot charge a refugee, so you charge the rest.

Senator BARTLETT—Obviously this is targeted at people who are abusing the system—that is the whole point of that package of measures. Surely you have people who are not abusers of the system but, for whatever reason, do not get a visa—some of whom surely would be people with very limited resources who are then going to have a $1,000 debt. Isn't it harmful to a low income person to have a $1,000 debt?

Mr Sullivan—It is probably no more harmful than what occurs in the case of the family which decides to put up $1,500 in advance to apply to come to Australia as a skilled Australia-linked applicant and finds that their occupation is not assessed as Australian equivalent and gets a rejection letter from us. They pay for the process they are involved in. I see no reason why a failed refugee should not make a contribution in a similar way, post event, to that which that other person made pre-event—obviously stretching limited means with the view that they may be eligible to come to Australia and then discovering they are not.

Senator BARTLETT—It is probably a bit broad, and I do not want to get too far off the topic, but does the department see the refugee and humanitarian program as just another strand of the immigration program which you have to administer?

Mr Sullivan—No, but we have to be clear that offshore we have a refugee and humanitarian program. Onshore we have a refugee program. We do not have an onshore humanitarian program. This government does not have one—not the department.

Senator BARTLETT—In that case, do you approach the onshore program as just another strand of the immigration program?

Mr Sullivan—No, it is separate and distinct. There is a distinction that government has drawn between the refugee program, the humanitarian program and the non-humanitarian program.

Senator McKIERNAN—My question relates to the advice you have received about a possible breach of our international obligations. I note your attachment which you have provided, and latter advice from the Office of International Law. My question is: do you have the ability to take different advice from that of the Attorney-General's Department or the Office of International Law? I ask that question with the clear understanding and knowledge that the office has got it wrong in recent times and has previously got it wrong in dealing with our international obligations. I am wondering if you have an ability to go outside the Attorney-General's Department and seek advice that might be 'different' advice—I do not want to blacken the character of the department.

Mr Sullivan—So you want to outsource Attorney-General's?

CHAIR—I do not think that is what the Deputy Chair meant.

Mr Sullivan—The government of the day seeks advice as to the constitutionality and the legality of its legislation from the Attorney-General's Department. When others propose that what the Attorney-General's Department is saying is wrong, the Attorney-General's Department will consider it and advise us. But our advice, the government's advice, is taken from the portfolio created to present such advice. It is interesting to think of the ramifications of what you are suggesting.

Senator McKIERNAN—It may be interesting, but let us have a look at another piece of legislation that is currently before the parliament relating to the privative clause. What did the department do in an instance like that? It gathered together a group of eminent legal individuals and posed a series of questions to them to get advice back. Did you not?

Mr Sullivan—Yes, but that is policy advice. That eminent group of persons was not asked whether the legislation drafted was constitutional or met our international obligations. That group of eminent persons was asked, 'Provide us policy advice as to how we should go.' It was A-G's which said the judicial review bill was constitutional and met international obligations. It was not that group of eminent counsel. That is the distinction. One of the primary responsibilities of the Attorney-General's Department—and I think you are going to talk to the office—is to advise the government, advise the parliament, on whether or not bills before it meet Australia's legal obligations.

Senator McKIERNAN—I have no doubt that, when the attorneys appear next week, they will reinforce the view that is contained in the attachment. But that does not necessarily mean that they have got it right because, in the past, when they have offered advice, in these areas as well as other areas which are not the subject matter of this inquiry, they have got it wrong.

Mr Sullivan—But that is why we have a separation of powers between the judiciary who will then say, 'You got it right.' If someone challenges and says, 'This is in breach,' there are mechanisms outside the executive and the parliament to test those views. But the executive and the parliament, in producing laws, seek advice from the Attorney-General, and his or her department or portfolio, as to whether or not those laws are going to stand. Our advice from them is clearly that, yes, these laws are fine.

Senator McKIERNAN—Going back to the original question, do you have the ability, then, to go outside the Attorney-General's Department to check their advice or get an alternative or different opinion or, if you like, merely a second opinion?

Mr Sullivan—It goes into the machinery of government. Cabinet will not consider a piece of legislation—this is longstanding practice—unless the Attorney-General's Department advises that that legislation is everything that the government requires it to be. As to whether you can get a first, second or third opinion, I am not aware of impediments to seeking and spending money on opinions. I know in the end the advice that matters is the Attorney-General's advice to government.

Senator McKIERNAN—A number of organisations and a number of witnesses have put it to the committee that what is happening here is in breach of the international obligations. It is for those reasons that I am directing the questions in the way and in the framework that I have directed them to you. I think it would be very useful were we able to get an alternate, impartial view. I accept that those appearing before the committee were approaching this particular inquiry from this distinct point of view. To a certain extent, without impugning your motives, I think you are approaching it from a different point of view. It would be useful from my personal view—and, I think, the point of view of the whole committee—were we able to get something that was perhaps somewhat more impartial. If the department is not able to do that, that is—

Mr Sullivan—I think you are advocating the outsourcing of Attorney-General's. It is clearly our responsibility to get from Attorney-General's what, in its view, are the government's obligations in this way. There would not have been a piece of legislation come forward from a minister for immigration in the last 10 years where the commentators did not raise that it breached Australia's international obligations. Governments have relied for 10 years on the advice of the Attorney-General's Department that those successive pieces of legislation do not impugn Australia's international obligations. We, in presenting legislation to the parliament, get clear advice from the Attorney-General's Department that it does not.

Senator McKIERNAN—I have no more questions, but I would say that I am not advocating the outsourcing of the international law section of the Attorney-General's Department.

Mr Sullivan—You just want us to go to private legal advisers.

Senator McKIERNAN—However, on the strength of their opinions that have been given to date and, consequently, the embarrassment that has been caused not only to the government of this land but to the people of this land, the department needs to be looked at. The advice that has been gained or tendered—not in this area particularly—has in recent

times been seen to be wrong. Consequently, we, the people of Australia, and the parliament of Australia, have got egg on our faces. Maybe outsourcing might be an answer to the problems.

Mr Sullivan—Not in immigration legislation.

Senator McKIERNAN—No, I did not say it was immigration—score cards in recent times.

Mr Sullivan—The score card of immigration legislation is being challenged on the basis of impinging international obligations. As you would be aware—

Senator McKIERNAN—I am.

Mr Sullivan—It is a fact that the advice of the Attorney-General's Department has proven consistently to be accurate.

Senator McKIERNAN—More recent things.

Mr Sullivan—Not in this portfolio.

Senator McKIERNAN—It is still the same personnel giving the advice though, is it not?

Mrs IRWIN—You have suggested in evidence that, partly on cost recovery principles, you would regard $1,800 as a suitable level for the fee. You also stated that the department had collected only 10 per cent of the fees owed. Can you explain to the committee why you are using cost recovery principles to set the level of the fee when so little is being recovered?

Mr Sullivan—I think I said that I saw $1,800 as a ceiling. I do not think—unless you correct me—that I said $1,800 was an appropriate level of fee. I said it was the ceiling—it was what it cost us to do it. I am not sure why you are laughing, Dr Theophanous.

Dr THEOPHANOUS—You did so say that.

Mr Sullivan—Show me that and I will admit it. I will check that personally. We can check *Hansard*.

CHAIR—Can we not get into personalities in this committee?

Mr Sullivan—Anyway, basically what we are saying is that in most of our processes we ask people who engage in those processes to make a contribution towards the cost of the process. Persons who seek to enter Australia as a student, as a temporary resident, as a migrant, as a visitor from some countries; those persons who seek to extend their stay in Australia; and those people who seek to change their status while in Australia are asked to contribute towards the cost to the Australian taxpayer of a process involving a non-taxpayer.

In respect of a failed applicant for refugee status at review stage, we do not charge and we do not seek cost recovery at the primary stage. But, having had it asserted by a decision maker that you are not a refugee and having decided to proceed to review and failing at review level, we seek a contribution towards the cost. The parliament has at this stage said $1,000 is an appropriate cost; $1,800 is the cost to us and, therefore, we would regard it as the ceiling. Somewhere between the current $1,000 and the $1,800 is, I believe, an appropriate level of cost recovery.

As I say, if the accountant in me took over, having applied a discipline of cost recovery, I would seek maximum collection of that revenue. But that would impose an impediment to the process that those with limited means could not meet—that is, they would not even know what the outcome of the review was because they could not afford to find out. This one is designed deliberately to say, 'If you really want to go down this review mechanism, go down it. We will take you through it; we will get you to a decision. But understand that, when we get to the decision and it is a negative decision, the minister does not seek to intervene and a court does not seek to remit the decision back to the tribunal, you will be charged $1,000, and we will seek to recover that from you.'

The nature of the caseload is that, having made that decision not to put the accountant's hat on and charge up-front, the capacity for people to ignore the debt, to depart the country without paying the debt or to disappear into the community without paying the debt is high. We know that the greatest number of those people who pay the debt are people who seek to apply for another visa and who have an impediment in applying for another visa of having to clear such debts. That is the nature of the balancing of the fee. As I say, if we wanted to make sure that our collection rates were high, we would put a very big hurdle in front of the people at the start of the process. We do not do that. We seek, as we can do, to do it at the end of the process. The cost recovery principle is across our portfolio, and it is something that says, 'It is reasonable that the Australian taxpayer pays for the primary decision and that the Australian taxpayer subsidises the review decision but that the individual involved,' who generally is not an Australian taxpayer, 'should make a contribution to the cost of processing that review decision.'

Dr THEOPHANOUS—You said earlier that there were two factors that you think contributed to the reduction in primary applicants. One was the shortening of the time, which was a recommendation of this committee—the whole process—and the other was this $1,000 fee. It is possible, is it not, that in fact it is the dramatic shortening of the time which has been responsible for the reduction in primary applications? It is possible that the overwhelming proportion of the explanation is simply the fact that people previously thought they could get, I think you said, five hundred and something days but now they get 96 days. So, isn't it possible that the real impact of the fee is not what you say but the fact that the department has now adopted this alternative strategy of processing—which was recommended some years ago, I might say—so-called apparently non-genuine applications very quickly?

Mr Sullivan—I will again correct you. I did not say that the two aspects were the shortening of the time and the $1,000 fee. I made it clear that I would not seek to assert what proportion of the package of measures the $1,000 fee contributed but that the package of measures includes the shortening of time, the 45-day rule, the $1,000 fee and the capacity for the tribunal to move quickly to a decision where it is obvious that they should. There is a

package of measures there, and I have not sought to assert what proportion of the impact was the $1,000 fee as opposed to other elements. All I have said, in response to a question, was that if you take away the $1,000 fee you weaken the package, and the probability of the impact of the package lessening is real.

Dr THEOPHANOUS—You say that if you take away the $1,000 fee you weaken the package but, from your own admission a moment ago, you do not know what proportion is contributed by the $1,000 fee vis-a-vis the other measures so you do not know the extent that you weaken the package.

Mr Sullivan—No, I have asserted that I do not know. I have also asserted that it is a part of the package, and I believe the probability of it being weakened, if taken away, is real.

Dr THEOPHANOUS—Going back to the example that you gave of how different it is from previous times, when a person goes to an immigration agent, he is offered a very different product. He is faced with 96 days, a $1,000 fee and quick processing at both levels, and that is very unattractive. The question then arises as to what this is doing. In the case where he is a non-genuine person, is it the $1,000 fee or is the fact that he cannot gain the three years which is the determining factor?

Mr Sullivan—I do not know.

Dr THEOPHANOUS—Thank you.

CHAIR—As you can see, the committee does have some troubles with this. In response to my last request for statistics after the last hearing, the department presented us with more than 240 graphs. Some of them are dealing with small numbers, so you will understand that it is very hard for the committee to get a clear picture. The department has made the distinction between those countries that tend to produce legitimate refugees and those that do not.

The basis of your argument tends to rest on the fact that, amongst those countries which do tend to produce legitimate refugees, it has not had an impact and amongst those countries which do not tend to produce refugees, it has had an impact. I was wondering whether it would be asking too much of the department to separate those into two separate graphs so that, instead of getting 240 graphs, we could get two—one of them containing what countries the department believes are legitimate refugee-producing countries and the other graph of those countries which the department believes are not legitimate refugee-producing countries. If we could see those two graphs, and the percentage of reviews between those two graphs, that would provide some valuable information for this committee, which we would be able to use in our deliberations.

Mr Sullivan—Nothing is too much trouble, Chair. We will do that. We probably will label them as something else. I think we would do countries where, say, the percentage of applicants that were found to be refugees was less than three per cent or four per cent as opposed to those countries where the percentage of applicants found to be refugees was greater than a particular percentage, and we will work out what that number is rather than referring to them as having great propensity to produce refugees.

CHAIR—And you will give us a list of those countries on those two graphs?

Mr Sullivan—We will say what countries are included in each.

CHAIR—Thank you. I think that will be of assistance to the committee.

Mr Sullivan—I think that would be pressing a few buttons by wise people.

CHAIR—Thank you very much. There being no further questions from the committee, thank you very much for appearing before us today.

Committee adjourned at 9.20 p.m.