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JOINT STANDING COMMITTEE ON MIGRATION

Reference: 2001 Review of Migration Regulation 4.31B

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SYDNEY

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JOINT COMMITTEE ON MIGRATION

Thursday, 22 March 2001

Members: Mrs May (Chair), Senators Bartlett, Eggleston, McKiernan and Tierney and Mr Adams, Mr Baird, Mrs Irwin and Mr Ripoll

Senators and members in attendance: Senator McKiernan and Mr Baird, Mrs May and Mr Ripoll

Terms of reference for the inquiry: 2001 Review of Migration Regulation 4.31B

WITNESSES

Committee met at 9.36 a.m.

CHAIR—I now open this public hearing of the Joint Standing Committee on Migration's review of migration regulation 4.31B. This review was referred to the committee by the Minister for Immigration and Multicultural Affairs. The regulation provides for a $1,000 fee payable by 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. The committee previously reviewed and reported on this regulation in May 1999. The committee concluded that there is a significant amount of abuse from protection visa applicants. There is evidence to suggest that regulation 4.31B may have been effective in reducing that abuse, although this is difficult to gauge given the short time that the fee has been in place. There is no evidence to date that regulation 4.31B has deterred genuine refugees from applying for review. There is no evidence that regulation 4.31B breaches Australia's international obligations to refugees. The suggested alternatives are not appropriate, and therefore the fee should be retained but it should be subjected to a further sunset clause to allow for a further assessment to be made of its effectiveness. With the approach of the sunset clause date of 30 June 2001, the minister again asked the committee to review the regulation. The committee has received 21 submissions from interested organisations and members of the public. If you would like further details about the inquiry please feel free to ask any of the committee staff here this morning.

I now turn to the proceedings at hand, the committee's first public hearing for the current review. The committee will take evidence from witnesses as listed on the program. I now welcome witnesses from the Department of Immigration and Multicultural Affairs to give evidence.

[9.38 a.m.]

BEDLINGTON, Ms Jennifer Jane, First Assistant Secretary, Refugee and Humanitarian Division, Department of Immigration and Multicultural Affairs

PARRINDER, Mr Wendell John, Acting Director, Protection Services Section, Department of Immigration and Multicultural Affairs

CHAIR—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 a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Ms Bedlington—No, thank you.

CHAIR—The committee prefers that evidence be taken in public but, if you wish to give confidential evidence to the committee, you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

Ms Bedlington—Yes. We have provided the committee with a detailed submission but, if the committee will provide us with an opportunity to make a few comments, we would like to highlight some of the points in that submission and of course be ready to answer any questions that the committee will want to ask. Firstly, we would like to say that the government remains strongly committed to meeting its international obligations as defined by the convention and protocol relating to refugees, the convention against torture, ICCPR, and the Convention on the Rights of the Child.

The $1,000 post-RRT decision fee was one of the elements in the package of measures introduced on 1 July 1997. It was designed to reduce misuse of the protection visas system and provide an avenue for appropriate cost recovery, while complying with our international obligations. To protect the vulnerable, and so as not be a barrier to bona fide applicants, the fee applies only at the review stage and not to primary assessment. It is not paid by those ultimately found to be refugees or who are granted a visa through the minister's intervention powers.

The fee is designed as a deterrent to the lodgement of mala fide applications, and to provide an avenue for partial cost recovery. It is primarily targeted at applications lodged by those in the community, but appropriately applies to all unsuccessful applicants, including unauthorised boat and air arrivals. It is important to emphasise that the fee is not, nor is it intended to be, a penalty. Rather, it is appropriately a contribution by unsuccessful applicants to the cost of their RRT reviews. Submissions to the last review argued that, because the department imposes a fee on unsuccessful applicants, all unsuccessful applicants are considered to be mala fide and therefore penalised. This is not correct. A number of unsuccessful applicants to the RRT are genuine, if mistaken, in their belief that they are refugees. They are bona fide applicants. The fee has been shown to be a deterrent to mala fide applicants. In order to determine the effect of the fee on bona fide and mala fide applicants, data relating to applications lodged by persons in the

community over the past five years was analysed according to whether the applicant was of a high refugee producing or low refugee producing nationality.

I would like to take the opportunity this morning to emphasise that the separation of applicants into high refugee producing and low refugee producing nationality groups has been done for statistical purposes only. These classifications are not used in, or relevant to, the refugee assessment process. Nor should this classification be taken to imply that all applicants of high refugee producing nationalities are bona fide, or that all applicants of low refugees producing nationalities are mala fide. High refugee producing nationalities have a greater proportion of bona fide applicants, and low refugee producing nationalities have a greater proportion of mala fide applicants. This is to be expected, given that a person from a country which does not have a record of respecting human rights has a greater likelihood of genuinely believing they are at real risk of persecution than does a person from a country which adheres to international human rights standards. The imposition of the fee is therefore not intended to act as a disincentive to those persons who have genuine claims to Australia's protection. Rather, it is the mala fide applicants from predominantly low refugee producing countries that we are trying to address.

The fee has been effective in reducing mala fide RRT applications since 1 July 1997. As the data shows, the RRT take-up for the low refugee producing group is increasing more slowly than for all other nationalities, and the number of RRT applications from people of low refugee producing nationalities, as a proportion of all nationalities, has fallen. Importantly, the fee has no negative effect on bona fide applications to the RRT. The high refugee producing group shows a continuing high RRT take-up rate, which is consistently higher than that of all other nationalities.

Although the package of measures has been effective in reducing the number of mala fide applicants, there remains considerable abuse of the protection visa system. This assertion is supported by the statistics in DIMA's submission. Since 1 July 1997, in 48 per cent of all cases finalised by the RRT for low refugee producing nationalities, the matter was decided without the applicant availing themselves of an opportunity to attend a hearing to give evidence. This figure is less than 2 per cent for high refugee producing nationalities. Moreover, applicants of low refugee producing nationalities received only 2.09 per cent of all successful outcomes, yet were responsible for 36 per cent of all primary applications.

In conclusion, retaining the fee is necessary to continue the disincentive effect on potential mala fide applicants to the RRT. Despite increasing revenue—last year more than $830,000—the $1,000 fee falls well short of full cost recovery. In this regard, the RRT annual report indicates an underlying cost of $2,755 per finalisation. To remove the fee—that is, to allow the sunset provision to remain—would send a message to the Australian and international community that the government was softening its attitude to misuse of the system and lead to a substantial revenue reduction in future years. The fee has been shown to be effective and is not a disincentive to bona fide applicants seeking Australia's protection. The imposition of a further sunset provision would result in a further costly review that would be unlikely to deliver different conclusions. Regulation 4.31B can and should be reviewed as part of the government's usual business.

CHAIR—I would like to take up first the full cost to the department. We are obviously not recovering the cost that is for the processing. Can you just explain to the committee why we set a $1,000 fee when we know what it is costing for these applications?

Ms Bedlington—The thinking behind the setting of the fee was in line with the government's policy on seeking only partial cost recovery for administrative review of decisions. The $1,000 figure is related to the trigger point, as it were, for placing the person on our movement alert list. If they have a debt to the Commonwealth in excess of $1,000—whether it is through this process or other processes—that is the trigger point for placement on the MAL. If their name is on the MAL as owing that debt to the Commonwealth it means that when a decision maker is faced with a further visa application from the person the visa will not be granted unless the debt has been repaid or adequate arrangements have been put in place.

Mr BAIRD—In terms of that debt to the Commonwealth, is that because of the costs of their period in detention?

Ms Bedlington—That is another way in which the debt can be incurred but this is the debt that results from this post determination RRT fee that we were talking about. There are other ways in which they can incur a debt to the Commonwealth and one of those is the costs of the detention—if the have been in detention, obviously.

CHAIR—How many are paying the debt? Obviously, these debts are mounting to the Commonwealth and not everyone who is unsuccessful is paying that $1,000.

Ms Bedlington—As a general comment while we are trying to find the exact figures, what we are seeing is that increasing numbers in fact are paying the debt. Certainly the trend is that if they subsequently want to apply for a visa—sometimes people who already left Australia decide that they want to come back—they pay—

CHAIR—They pay the debt.

Ms Bedlington—or make adequate arrangements. The amounts that have been received—say over the last three financial years—are $104,000 in 1997-98, $381,855 in 1998-99 and $832,600 in 1999-2000. I think that demonstrates the increasing propensity for people to repay.

Mr RIPOLL—I just want to explore a couple of things about the $1,000 fee. You have partially answered my question—I wanted to know what the formula was for setting the fee at $1,000. I am not really satisfied that that is just the trigger point and therefore that is where you should set the fee. To me, what that says is it is not about recovery: in fact, it is nothing to do with what is written down in policy. What that fee is really about is the trigger point. That is the explanation that I am hearing. It is about making sure that people are triggered onto the MAL system and therefore listed. It has nothing to do with the money and nothing to do with cost recovery. In fact, I think the figures actually show that. This facade of continually saying that it is about the policy of cost or debt recovery is really not the point at all. The point at hand is about getting people listed on the MAL system.

Ms Bedlington—I think it would be fair to say that it is about both. As I stated, the government's position is for partial cost recovery only in relation to administrative review. If we

look at the history of both the Immigration Review Tribunal and the Refugee Review Tribunal there has never been full cost recovery of the costs of consideration of a review application. If it is going to be partial cost recovery you then move to saying, 'Well, how do you set what proportion it is that it is going to be.' It is at that stage that the relevance of the movement alert list trigger comes into play. So I think it is actually about both, but there is not a set formula that says that it will be a particular percentage of the total cost.

Mr RIPOLL—I am concerned that, if it is about partial cost recovery, then is it a partial cost recovery of the total amount of money owed as a debt to the Commonwealth, or is it partial cost recovery as a total amount of each individual's debt? At present it would be more based on the latter, that is, on each individual's debt rather than a total debt.

Ms Bedlington—The debt that is raised is partial cost recovery of the cost to the Commonwealth, so the cost to the Commonwealth is $2,700 or so at current costs for each application, of which we raise a debt for only $1,000. So it is not partial in the sense of the debt that is raised against the individual; it is partial against the cost to the Commonwealth.

Mr RIPOLL—The reason I raise that specifically is because it is obvious from the figures that not everyone pays, and therefore if not everyone pays, even if the debt recovery fee was full—let us say it was set at $2,700—you will still only have partial debt recovery. The policy could be said to be still very effective in terms of partial debt recovery. You are never going to get 100 per cent of it back. Therefore, what I am saying is if the policy is then for partial debt recovery, why not set the fee at full debt recovery per individual debt, which will give you partial debt recovery of the total debt to the Commonwealth.

Ms Bedlington—At the time of the last review, if I recall—my colleagues might correct me if my recollection is wrong—we argued in our submission that the fee should be increased at that stage I think to $1,800. If I recall correctly that was not accepted by the report of the review committee when this committee looked at it last time.

CHAIR—Are you talking per application fee?

Mr RIPOLL—I am not supporting an increase; in fact I actually oppose the $1,000 fee. I want to understand the thinking and what is behind the words that are used. If we are talking about partial debt recovery then it is a partial of the partial: it is a partial of the individual debt which is a partial of the total debt. So again the $1,000 fee is an arbitrary figure. I am trying to understand the point. It has nothing to do with the $1,000 or even debt recovery. I still believe that it is only there as a mechanism to trigger onto the MAL list. I would say if that is the goal—because that is all that is being achieved—then, rather than have the fee which is a very crude method of getting people there, why not make all applicants who are unsuccessful listed, otherwise put on the list, or have some other mechanism? Why use this rather than another system to achieve your goals? It just seems to be a roundabout way of creating a lot of bureaucracy, a lot of work and a lot of administration to get in the end to where you are going.

Ms Bedlington—I think there is another point to be made about the objective of the fee, and it is actually the primary objective of the fee. The fee was put in place as part of a package of measures that were designed to reduce the abuse of our asylum system and to act as a deterrent

to people who were applying for review to the Refugee Review Tribunal solely to prolong their stay in Australia and avoid removal.

What the amount of the fee was going to be is a secondary consideration. The decision was taken to put this in place as a deterrent and then the question was about the fact that the Commonwealth government had a policy position that there would be only partial recovery of cost to the Commonwealth and then, as I explained before, the setting of the appropriate level as a proportion of that total cost to the Commonwealth was set at the trigger point. I think it is a hierarchy of considerations. The most important one is that the fee exists to provide a disincentive for people to misuse the availability of review to avoid removal.

Mr RIPOLL—There is this argument that always comes forward about people abusing the system to prolong their stay. If we are going to use the words 'they are prolonging their stay', that in itself implies that they are not going to stay, that really it is prolonging and it is just a matter of inevitability that you will be removed. If they are staying in detention or somewhere else, how would you explain that someone would want to prolong their stay in a detention centre, at Woomera?

Ms Bedlington—I think you need to argue that point in the two different categories, as you have indicated. For people in the community who are working, whether they have permission to work or not, spending months and perhaps going into years, depending on the size of the backlog, can actually deliver considerable benefit. For somebody from a developing country, for example, who uses their time in a developed country earning reasonably good wages, sending money home, every month that they are able to stay in Australia and continue to work is an advantage to them. They will use every mechanism to prolong their stay to do that. For people in detention, the point you are making is valid in the sense that obviously they are not getting the benefits from employment. Nevertheless, while they think that there are still a chance of achieving a migration outcome through pursuing every avenue of appeal, I think it is not surprising that many of them choose to do so. Of course, many of them do not. Not every applicant goes to appeal. Some do go after the primary decision, but large—

Mr RIPOLL—But when we boil what you are saying down to a figure, what sort of figure are we talking about of those who apply and are unsuccessful, raise a debt and then either do not pay their debt or pay their debt? I mean those unsuccessful applicants who then have a debt.

Ms Bedlington—I think we will have to take that on notice to give you the exact figures.

Mr RIPOLL—Ballpark: a couple of thousand, a few hundred, several hundred, 10,000, 5,000?

Ms Bedlington—What proportion of people have paid their debt—

Mr RIPOLL—Even more simply, how many people are unsuccessful and therefore raise a debt?

Ms Bedlington—It is 14,000 unsuccessful who have become liable for the imposition. That is in the submission.

Mr RIPOLL—That is this year. I could not find that figure.

Ms Bedlington—Page 27 of the submission.

Mr Parrinder—Paragraph 4.7.5.

Mr RIPOLL—How many of those are in the community and how many are in detention?

Ms Bedlington—Many of the 14,000 will have left Australia.

Mr RIPOLL—The department is using the argument that this is a deterrent for those in the community working earning good wages and sending that money home and therefore we have to try and prevent this happening. So there is a significant number, and I am trying to get to that number. Out of 14,000, most of those are not in Australia?

Ms Bedlington—The issue is not so much of the 14,000. I am just trying to make sure I understand what you are saying. If it is working as a deterrent, they are not in the 14,000, they actually have not applied for a review. Indeed, we suspect that many of them did not even bother applying in the first place, even at the primary level, because they know—

Mr RIPOLL—But the figures do not show that, though. There is not that much of a drop-off, not that much change, that other factors could not have played some role—including 'other measures'—so that you could say, 'I can distinctly point to that one thing being the cause of this change.' I think from all the other evidence there is enough to say that that is not the case. The reason you are putting forward is that we are trying to prevent from working in Australia and earning good wages people who are here illegally or waiting for their review to come forward, and I am asking: how may of those people are there? I do not believe there is a great deal. Can you give me a figure and maybe compare that to something else?

Ms Bedlington—It is always difficult to work—

Mr RIPOLL—It is difficult, but that is what I am trying to get at. I am saying that your argument is just based on hearsay. It is difficult—your are right—because you cannot give me the figures. I am asking you to give me some figures and stats. I have read your submission and the figures, and the figures do not look that impressive to me and they certainly do not look like there is any distinctive thing that you could point to and say, 'This is definitely the case.'

Ms Bedlington—It is certainly true to say that it is hard to disentangle which part of the package of measures that we have taken over the last eight or 10 years has uniquely contributed to deterring misuse of the asylum system. I think that is absolutely true. The only way we would actually know how many people have been deterred from applying for protection in the first place or the numbers who have been deterred from applying for review would be to ask each and every one of them what it was in the package of measures that actually contributed to that decision. I suspect the answer may not be straightforward—that it was just one of the things. We have consistently argued that we see this as a package of measures. We do not for one moment claim that the post-determination RRT fee alone is solely responsible for what is clearly a downward trend in the misuse of the system as a whole. What we do say, though, is that we believe it is an important part of the package. The comment I was going to make about why it is

difficult to give numbers is that you know the ones who were not deterred but you cannot quantify the ones who did not come to Australia in the first place because they knew that they could not get the benefit or—

Mr RIPOLL—That is exactly my point: you cannot quantify it. You could not quantify it in any year. Therefore, you could not really say that this was quantifiable this year. You are right—I agree with you totally—it is not quantifiable. Just to pick up on one thing you said, if the numbers are increasing of those people who are paying the debt in relation to the $1,000, would that not be an indicator of the genuine nature of those applicants—otherwise, why bother paying the debt?

Ms Bedlington—I do not think that necessarily follows. I would suggest that it is probably more an indication that these people wish to get a visa and return to Australia for family reasons, tourism or whatever other reason. While they may genuinely accept the debt and wish to pay it back, I do not think that tells us anything at all about whether they believe they were refugees in the first place.

Mr RIPOLL—Or vice versa.

Ms Bedlington—That is right.

Mr RIPOLL—You said earlier that it was government policy and administrative decisions about cost recovery generally across departments—you did not specify; it was just DIMA. Can you tell me if any other government departments are using this same method for any abuse of any other review tribunal?

CHAIR—I would say that Mr Ripoll is talking about is, for example, the Veterans Review Board and if the veterans there get a 'no' they can go to the AAT and there is no fee.

Ms Bedlington—I am certainly aware that it is not the same situation, but I think there is a fundamental difference between the clientele. If you look at the Veterans Review Board, these people are Australian citizens applying for an Australian benefit. What we are talking about here are people who have no right to remain in Australia unless they are successful in a visa application.

Mr RIPOLL—But you only discover that right after you have been the review process, though—you do not discover it prior to going through a review. You cannot say that it is done before the review process has taken place.

Ms Bedlington—We would argue exactly the opposite. We would argue that they had had a decision under the Migration Act by the—

Mr RIPOLL—Then why do we bother with the review process? If you would argue from the department's view that it is all done, why are we bothering to waste taxpayers' money in a review process?

Ms Bedlington—It is part of our administrative law framework that gives people the right to challenge, to make sure that we did get it right in the first place.

Mr RIPOLL—So it is a right; they do have that right and it is not a foregone conclusion.

Ms Bedlington—The act sets out that right.

Mr RIPOLL—Aren't there decisions that are set aside?

Ms Bedlington—Yes.

Mr RIPOLL—Yes, there are.

Ms Bedlington—And they do not pay the fee.

Mr RIPOLL—So the process then works?

Ms Bedlington—Yes.

Mr RIPOLL—So it does; okay.

Ms Bedlington—Can I just add one comment. You said that we cannot quantify the effects of the fee.

Mr RIPOLL—I did not say that; you said that.

Ms Bedlington—I thought you were putting the proposition that we cannot quantify—

Mr RIPOLL—No. I did not say it; you said it. You said, 'I can't quantify it for you.'

Ms Bedlington—Okay, I will say it as well. I would like to emphasise the point that I made before, that we are not arguing that this measure alone is responsible for these figures. If you look at the primary applications that have been received over the period of the year 1996-97, you see we received nearly 10½ thousand primary applications. In 1997-98 the figure went down to 7,405; 1998-99, 7,182; 1999-2000, 7,497. If you look at the date of these measures being put in, you see that there is an interesting trend, that we have maintained applications to our onshore asylum system at around 7,000-7½ thousand since the introduction of this package of measures—3,000 lower than it had been the year before. I think that is quantifiable, but I agree with your argument that we cannot disentangle this measure from the rest of the package.

CHAIR—When you look at those figures, you see the RRT figures have actually climbed from 1998-99 to 1999-2000. They have marginally climbed, so you would have to say the $1,000 is not a deterrent to them going to the RRT.

Ms Bedlington—This is where it is necessary to look at the nationality groupings. The big reductions in the primary applications were from non-refugee producing countries, particularly those in our nearest region—Fiji, Tonga, the Philippines and those sorts of countries. As we argue in the submission, it is not surprising that the level for flow-on to review from refugee producing countries continues to be high. If you look at the proportion of the total applications re-

ceived, you see the proportion from refugee producing countries has increased. That is actually not a surprising figure.

Mr BAIRD—I have a certain sympathy for you, in terms of establishing a cost basis, on the basis that there seems to be a perception by DIMA that you are dealing with people who want to rort the system. Let us come at it from another angle. How many of those who go to the RRT are actually successful? What is the percentage?

Ms Bedlington—While we are finding the average figure, can I just make some preliminary comments. They amount to a word of caution. Because you would expect that the set aside rate may very well be higher where you have applicants coming from a refugee producing country rather than one where almost 99 per cent of the claims are manifestly unfounded, the actual nationality groupings, the proportion from particular nationalities, is actually relevant even to the set aside rates.

Mr BAIRD—Sure, I understand that.

Ms Bedlington—Remembering, of course, that an RRT set aside does not necessarily mean that the primary decision was wrong in law because it is a de novo decision on the merits and a number of things can have changed. The country conditions can have worsened. What we are seeing far too often is that applicants are not putting forward claims at the primary level and decide to put forward either different claims or more claims at the review level. In a sense they are making sometimes a decision on quite a different set of parameters. That is the note of caution in terms of interpreting an average set aside rate. The set aside rate, though, has dropped when you look across the years that we are talking about.

Mr BAIRD—'Set aside' means that they have been through the RRT process—

Ms Bedlington—And they do not agree with the primary decision. They have set aside the primary decision. This is for community-based applicants only—I will ask my colleague to find the detention one. In 1995-96 it was 12.9; 1996-97 was 10.9; 1997-98 was 12.2; 1998-99 was 8.0—

Mr BAIRD—It was about 20 per cent in the detention centres.

Ms Bedlington—In 1999 it was 6.4. That is right. I do not know that we actually have the figure; you may be able to ask the RRT when they come here. They probably have it. The other point is that our detention caseload has fundamentally changed. In years earlier the predominant number of boat people, for example, were from the PRC where the set aside rates were very low but the overall approval rates were very low. We now have cases from refugee producing countries such as Iraq, Iran and Afghanistan. You will see there is room for perhaps a more beneficial interpretation of the facts, for more benefit of the doubt, for different decisions about the credibility of the applicant that are open for the RRT to make, which I think—

Mr BAIRD—There are still quite a number who manage, on review, to have it decided that they are acceptable. So one could question the assumption that we should provide disincentive to people to come in, even though I understand what you are about. Do you believe that the time taken for the review process is appropriate? Part of the costs seems to be due to the time that is

involved. For those of us on the human rights committee, the big concern was not those who were processed and received a primary decision early but those who sat there. In terms of the length of time taken, if we go back to the first principles, how many people are actually involved in making decisions? It seems to me, having watched the process, that magic words are uttered. From my point of view those who come with people smuggler processes know the words to trigger—and we will not go into them now—so they manage to hit the right buttons. There are people that we on that human rights committee saw that you listen to and you think, 'Why on earth were these people rejected?' There are lots of reasons, but other people manage to press all the right buttons. Is it one person, the case officer, who finally makes the decision? I know you go through the process of security checks and medical checks, but there must be one person who makes an assessment—bang—whether they are in or not. Is it one?

Ms Bedlington—Are you talking about the primary level?

Mr BAIRD—Primary.

Ms Bedlington—I will deal with the community and detention cases separately because there are additional processes for people who come on boats. I will come to those. Regarding community based ones, they make the application and it is assigned to a delegate of the minister—that is, one case officer—who is responsible for that case and deciding whether an interview is required, looking at the cases—

Mr BAIRD—So there is one person?

Ms Bedlington—There is one for community based.

CHAIR—Mr Baird, maybe we could have 'community based' defined for the benefit of—

Ms Bedlington—Community based are non-detention cases. They are out in the community.

CHAIR—So as long as they are out in the community and not in detention, they are community based applicants?

Ms Bedlington—Yes.

Mr BAIRD—There is still one case officer for each case?

Ms Bedlington—Yes, that is right. But there are two stages, in a sense, that are protection related in relation to somebody who comes without authorisation and who is in detention. They are actually interviewed by an entry team and asked some questions that are very open-ended questions about why they have come to Australia and why they feel that they cannot go home. A senior officer then looks at what they are saying to see whether they are providing information or raising claims that prima facie may engage Australia's protection obligations. We have that extra process because they are in detention and do not have the open access to advice that they would have if they were moving around freely in the community. If that is the case, the process of their making an application for a protection visa is facilitated. We provide them with government funded application assistance. When they lodge the application—if they

choose to do so—it is the same as the community based process in that they are assigned to one case officer. There are sort of two protection stages.

Mr BAIRD—The bottom line is that there is still somebody making a subjective decision, so therefore there is still the probability that it is not a strict objective measure. Somebody is still making an assessment on it. Because of that, I believe there is the right of those to make a claim because, as you say, it is part of our law to make an appeal against it. We can imagine—because some of the people who provided us with evidence were talking about the way they were treated by case officers, et cetera—that there are cases of where there is miscarriage of what should have been the appropriate decision. I understand that you see the overall package as being a disincentive, so that we do not have those who will rort the system. But the facts are that, first, there are people who are on review—it is still a reasonable percentage of people who get through having had their case listened to; and secondly, there is the subjective judgment of case officers. In terms of the key criterion for me in government and for Australians is: what is a fair go? A fair go is when you feel that you have been wrongly handled and you have the ability to have it assessed. To put penalties on people who are very often unable to pay these additional costs—especially as a lot of them will be returned anyway—do you think that is a fair go?

Ms Bedlington—I think that is a decision for government. I would like to make some comments about some of the things that you have said. You describe the decision making process as a subjective judgment and you are absolutely right. The decision making in the refugee context—

Mr BAIRD—Is there no other way that it could be done on a fairer basis?

Ms Bedlington—It is a complex decision. You have people who are making claims about what might happen to them in the absence of objective judgment. It is not a thing that you can prove.

Mr BAIRD—It is not a scientific process.

Ms Bedlington—I think there are some connotations to the word 'subjective' that sometimes are used in a way that says that it is less than fair. I think I need to say that it is lacking objective proof but it is—

Mr BAIRD—If it were on a strict scientific basis, there would be some reason because you still bring in elements of subjectivity when it is appropriate. There is also the question that Bernie Ripoll mentioned on the incentive for them to delay their time in Australia. Having visited the detention centres, there could hardly be a great incentive to stay in those places.

Ms Bedlington—But they see it is a great incentive if they can manage to have the decision set aside.

Mr BAIRD—We should not be surprised that they want to delay it, as we would if we were trying to enter Australia.

Ms Bedlington—I was not making a judgment about the motivation, just trying to describe it, I guess. The other point I would like to make about what you said is in relation to the

describing of the fee as a penalty. I would like to reiterate that it was never intended to be a penalty.

Mr BAIRD—It is meant to be a disincentive, though, isn't it?

Ms Bedlington—That is exactly right.

Mr BAIRD—The question is whether it is appropriate, given the fact that you are involved with subjective assessments and the fact that the decisions on so many applications are changed on review. If it was a case of one in a thousand, that is one thing, but, in terms of the detainees, as I recall the figures—I am sorry you do not have them—it is about one in five. To have a disincentive to appeal decisions which have been proved in some cases to be wrong raises the question of fairness, the same as for veterans' affairs people, even though the distinction is drawn that they are Australian citizens. These people are still claiming to be refugees under the Australian process. I just raise that issue. The final question is the length of time of the process. Doesn't the whole thing about delaying their time in Australia and the fact that some them are able to get work and send money back come down to the excessive length of time it takes for the RRT process?

Ms Bedlington—With your indulgence, before I answer that I would like to make a second point about the penalty. From a starting point of partial cost recovery for review, the fact that it has been designed so that it is applied only to those people who are not successful is in recognition of the fact that we do not want to be the position of providing a barrier to access to review, for all the reasons that you have described. People do not have to pay anything up-front. The access to review of a refugee decision is not barred in any way.

Mr BAIRD—Of the ones who are unsuccessful, what percentage of those do you actually cost recover from? Isn't it a minority?

Ms Bedlington—It is a minority in terms of people who immediately pay. But, as I pointed out before, more and more people are repaying the debt. Remembering that revenue collection is not a primary goal but is a beneficial side product, in a sense—

Mr BAIRD—If it is not a primary goal, why do it?

Ms Bedlington—Because of the disincentive argument. The argument is that many of the applicants, as you have pointed out, have the debt imposed and leave Australia. If they never want to come back—they are supposed to pay but they do not pay. The issue is, though, that if they do want to come back they do pay, and it is returning to the Australian taxpayer nearly $1 million.

Mr BAIRD—That is probably the strongest point that you make in that regard.

Ms Bedlington—That is why I wanted to come back to your other comment.

Mr BAIRD—In terms of the time, from my point of view, having been involved in the human rights, and my colleague here was there as well, one of the biggest problems is just the length of time of this RRT process. Isn't part of the problem that it is such a lengthy time and if

they are in detention centres it is costly to keep people there, if they are outside in the community they are working and may be taking other people's jobs, et cetera. There is incentive for them to try and prolong it as long as they can.

Ms Bedlington—Absolutely. The most effective disincentive to abuse of the asylum system is quick determination and speedy removal. Actually consistently delivering on that is a challenge, and it has never been more potently demonstrated than when we had so many boat arrivals in such a short period of time.

Refugee decision makers, whether they are at the primary level or in the tribunal, are an expensive resource. It is a complex area of decision making, as I said before. People take time to train. You cannot just have sitting there on the off-chance that you might get a great increase in applications in a month or two's time. But you are right in terms of the fact that quick determination is a very important part of this package of measures and indeed the RRT's legislation sets out 'quick' as being one of the ways in which they are meant to operate.

CHAIR—But what is defined as 'quick', though? Have we got a time frame?

Ms Bedlington—The RRT can talk to you about the standards that they have set for different types of applications, both at primary and review. For example, detention applications have the highest priority for obvious reasons.

Mr BAIRD—It is obviously a question of resources.

Ms Bedlington—And time lapsed.

Mr BAIRD—Just to re-emphasise: someone applies for the RRT review process and if they are successful there is no payment required; that is waived. If they are unsuccessful, they are asked to pay straight away but there basically is no compulsion, so if they leave the country all that happens is that if they seek to come back, whether as a visitor or whatever, then they have to pay that first.

Ms Bedlington—They either have to pay in full or make adequate arrangements.

Senator McKIERNAN—Can you provide me an explanation of why a discrepancy appears in tables 4.1.1 and 4.3.1, and the source of those figures. The first one is on page 12 and the second one is on page 16. They differ from the figures given by the Refugee Review Tribunal specifically in reference to the applications for review. Table 4.1.1, for example, says that in 1996-97 there were 7,904 applications lodged with the RRT. Table 4.3.1 on page 16 says that in the same year there were 9,081 applications lodged with the RRT. The RRT itself says that there were 7,513.

Ms Bedlington—Perhaps the heading needed to be clearer to show this: the analysis in table 4.1.1 is a cohort analysis. It takes the primary received in that year and shows what happened to them.

Senator McKIERNAN—It is received rather than application?

Ms Bedlington—It is primary received. For example, in 1995-96 it takes that 7,770 through and shows where they are up to. In 4.3.1 they are actually applications that were received in the year. Taking the RRT figure of 4,637 for 1995-96 as an example, some of those would have been primary applications that were included in the 7,770, but they may have also applied in one or more of the previous years. There are actual applications received in that year at primary and at RRT, and they do not all flow on in the same year.

Senator McKIERNAN—I am trying to look at this issue that we are required to examine. What we have got are three different figures. There is the figure from the RRT, a figure in table 4.1.1 and a different figure again in table 4.3.1. I would have expected at least one of the two differing figures within the department submission to be in line with what the RRT is putting forward. Hopefully the RRT and the department are working from the same figures.

Mr BAIRD—They are also different from the figures that were handed out to the human rights committee.

Ms Bedlington—I would have to check the human rights committee ones, because they should be the same as table 4.3.1. Sorry; you might be looking at the total. This analysis here is for community based applications.

Mr BAIRD—Why doesn't it say that?

Ms Bedlington—Yes; that is why I was saying that the table headings should be clearer. But, reading the submission, it is in the context of analysis of community based applications. So that probably explains that one.

Senator McKIERNAN—That is a bit disappointing, though. It is almost misleading the committee.

Ms Bedlington—We certainly did not mean to do that.

Senator McKIERNAN—It is very disappointing, because we are undertaking this review on the instructions of the minister. You had ample time to prepare a submission to provide the committee with factual, detailed, honest material, and you are not providing us with that. Are you not providing us with the actual factual material, are you?

Ms Bedlington—We are, in the sense that we have made it very clear, I thought, in the submission that we are separating out the analysis in relation to community based applications from the detention applications—for the reason that your colleague raised before: because the incentive and disincentive motivations are different between the two groups.

Senator McKIERNAN—I do not want to argue my colleague's argument. I am getting the submission that the department has put to this committee. I have just exposed to you the fact that we have got different statistics being preferred to us, on an inquiry that we are undertaking on the instructions of the minister. Are you saying now, Ms Bedlington, that what you have given us in hard copy is accurate, is detailed, is factual?

Ms Bedlington—Yes. If you would like the same analysis in relation to detention applicants, we are more than happy to take that on notice. The point that I was starting to make was that it is not relevant to the particular arguments that we were putting forward, because the arguments on which the fee was based were, we believe—

CHAIR—That the fee was based on, or that your submission was based on?

Ms Bedlington—No; the fee. We believe that they are particularly relevant to people who are in the community who are able to prolong their stay and work.

Senator McKIERNAN—But you are not telling us in the submission at that particular point in time, are you?

Ms Bedlington—I thought we had.

Senator McKIERNAN—I am reading here table 4.3.1T, 'Total PV applications, primary NRRT', because it differs from an earlier statistic given to the committee by the department. I have checked that. You told us earlier that you should have put a different headline on it.

Ms Bedlington—To make it clearer—even though I believe that it is clear in the argument in the text of the submission—

Mr BAIRD—Well, it was not clear to me.

Ms Bedlington—I apologise for that.

Mr BAIRD—I have to agree with my colleague. It is very misleading.

Ms Bedlington—It certainly was not intentional. Right through the text, we—

Mr BAIRD—But you can understand that for our committee it is not just a minor glitch; it is a major one in my view and very misleading. I agree totally with my colleague.

Ms Bedlington—I can only apologise. It certainly was not intentional.

Senator McKIERNAN—You have indicated that the $1,000 application fee is working and is deterring people. If that is the case, why are you relying on old evidence—for example, the submission by the United Nations High Commission for Refugees to the earlier inquiry some two years ago? Do you have any more up-to-date information to say that the system is being abused and that indeed the $1,000 fee is working to deter mala fides people?

Ms Bedlington—In terms of being able to quantify it, what we have provided with the committee was what we felt that the figures could show us. It is difficult, as I said before, to disentangle the total package. I think it is fair to say that there is clearly some continuing misuse of the asylum system. If there were not you would expect that we would not be receiving any applications from countries with extremely low or non-existent approval rates. The fact that we

continue to get applications where there are either no refugees found or under two per cent refugees found would seem to me to indicate some level of intentional misuse.

Senator McKIERNAN—On page 21 of your submission, table 4.4.2T—RRT Applications 'Low Refugee Producing' (LRP) Nationalities shows that figure to be on the increase. That is what we are talking about, that cohort figure of yours that you suggested is a better measurement than the overall statistical applications going to the tribunal.

Ms Bedlington—The flow-on rate for low refugee producing nationalities is increasing; is that what you are saying?

Senator McKIERNAN—I am looking at the chart that the department refers to the committee which shows that the applications from low refugee producing nationalities is actually on the increase and getting very close to the high point in 1996-97 when the fee was introduced.

Ms Bedlington—That is true. I guess the question, which I am afraid I am unable to answer, is: would it be worse if we did not have such measures as the fee?

Senator McKIERNAN—Then, if that fee is working to deter, why is it actually increasing from low refugee producing countries? Why are we getting an increased number of applications?

Ms Bedlington—That talks about an increased flow-on to the RRT. As I pointed out before, the overall applications—

Senator McKIERNAN—This $1,000 applies only to applications to the RRT; it does not apply to anywhere else. So can we stick to what we are talking about and not go off on different tangents.

Ms Bedlington—I think part of the argument that I was trying to make—it is not a tangent—is the fact that we have maintained at around 7,000 to 7,500 primary applications, we believe, partly as a result of this part of the package of measures. If we are making primary decisions quite quickly, even though there is a delay at the RRT and they are getting refused, they are obviously thinking that the overall amount of time that they can spend in Australia has reduced and perhaps it is not worth the airfare, the risk or whatever. So I think it is part of the thing. In terms of the flow-on to the RRT, of course there are some other indications about why that might be so. Involvement of migration agents and other community advice that says, 'You might as well have a go, there is some benefit there, it does not cost you anything to apply in the first place,' all of those things may be leading to people making a decision to apply to the Refugee Review Tribunal.

Senator McKIERNAN—The department reached a conclusion in its submission that there should not be another sunset clause, that the fee should now be locked in. You say in your summary:

The fee has been operating for three full years and there is evidence of a reduction in the RRT application numbers and a change to the RRT take-up rate for low refugee producing nationalities since the introduction of the fee.

I certainly accept that if we are looking at the total three years, but the committee is reviewing after a period of two years. In that two-year period, the figures are on the increase. If anything, the department is offering the committee an up-to-date argument to say that the fee in fact is not working because, when we quote your own figures from the chart I alluded to earlier, the numbers from low refugee producing countries are increasing and that has occurred since the committee conducted its last review.

Ms Bedlington—I can only reiterate my previous comment, that we are unable to say that it would not be very considerably worse if the fee was not in place. We will really only know the answer to your question about whether it is providing a disincentive if the fee were removed and it went up at a much steeper rate than it is already going up.

Mr BAIRD—Stop beating your wife!

Ms Bedlington—Yes.

Senator McKIERNAN—That would be fine. But then the department goes on to argue against a further inquiry, on the grounds of cost—I do not know what cost there is to the department; maybe at a different time we could explore that—and to argue against another sunset provision, on the basis that the government will conduct its normal review of what happened. If the department knew that this review by the committee was going to take place within two years, and yet you come here after two years so inadequately prepared, actually almost to the point of misleading the committee, what would it be like if there were no review in place? It frightens the living daylights out of me that the department, knowing that this review was to go on within two years—because it was an agreement between the government and the opposition at the time—has provided us with this material now, and argues that the system is working; yet the figures that you give us show us that it is not working, that the problem is actually on the increase. Then you argue that there should not be another review and that there should not be another sunset clause. We may have to talk to you again before the course of this inquiry is over.

CHAIR—We are running out of time. Mr Ripoll has another question, and we will resolve to meet with DIMA.

Mr RIPOLL—I will make this brief, because Senator McKiernan has actually hit on my points. Looking at chart 4.5.1T, actually it is not only the rates in high refugee producing nationalities that are going up but also those of all other nationalities. Actually, the fee is having the totally opposite effect. It seems that the $1,000 is an incentive for people to apply even further to the RRT, according to your graph.

But that is not my question. My question is this. Would it not be a useful exercise for the department, given that there is inconclusive evidence and also contradictory evidence, to perhaps set aside a 12-month or maybe two-year period where we do the opposite: remove the fee, and certainly keep all other measures, and maybe have a strengthening of the powers of the minister? Or else we could look at other measures but remove that part in particular—because I think that part is the worst part of this package—and have a look at where the figures go, and at whether there is a mathematical statistical deviation from what is currently happening, which is that there is an increase. That is what your figures say here. I have the figures in front of me in

4.5.1T, on RRT take-up rates for high refugee producing nationalities and also for all other nationalities. I have looked at the low producing refugee nationalities and they are all on the increase since the introduction of the $1,000 fee.

Ms Bedlington—I might make one point: just as we cannot argue that this measure uniquely is contributing to any entire disincentive effect, nor do I think you can argue that, if there are some gradual increases in some take-up rates, the fee is not working. I think either proposition does not stand up to analysis, because the factors that bear on this are multifaceted.

Mr RIPOLL—I accept fully what you are saying, and I actually agree with you. But how can you then turn around and say that, based on the evidence you have found statistically, this is working—when you have just said to us that it is not? It is one or the other. I am pretty clear on these matters. If it cannot be said one way or the other, how can you then say, ' Based on the evidence we have, it is working'?

Ms Bedlington—We believe that the package of measures is working—because of the substantial reduction in applications from non-refugee producing countries that have been sustained since the introduction of the package.

CHAIR—That is a reduction of primary applications, is it? That is not RRT.

Mr RIPOLL—But there is no fee in primary; and everyone knows and understands that. So there are other factors at play.

Ms Bedlington—And it could well be argued that some of the delays in relation to the RRT may be just as important a factor as the fee is.

CHAIR—Thank you for your attendance here today. If there are any matters on which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence, to which you can make editorial corrections.

Ms Bedlington—Madam Chair, I would like to make one final comment in response to Senator McKiernan's comment. If there is some analysis that the committee would like us to do, some different way of looking at the issues, then we are only too happy to respond to any such request.

CHAIR—We may pursue that with you. We will pursue that and certainly ask for another meeting.

Senator McKIERNAN—I think the initiative should be on the department rather than on the committee to ask for that. We are doing this at the minister's request. I think the onus is on the department to put forward the submissions and the accurate details.

Mr BAIRD—We need the detainees in detention centres included in the figures and we also need the success rate of going before the RRT—for detainees in detention centres—which was not available before.

Mr RIPOLL—If I could make it clear by saying to you: take your conclusions and assumptions and give us the evidence rather than giving us your assumptions and telling us that you do not actually have that or just saying, 'We know; we just know', because your figures show us the opposite of the assumptions you make.

[10.52 a.m.]

GODFREY, Mr John Fitzsimons, Acting Principal Member, Refugee Review Tribunal

TOOHEY, Ms Jill Frances, Registrar, Refugee Review Tribunal

CHAIR—I now welcome witnesses from the Refugee Review Tribunal to give evidence. Although the committee does not require witnesses to give evidence under oath, you should understand that these proceedings are legal proceedings of 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 a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Mr Godfrey—We did not actually submit a submission. We responded to a request to update some information from our last submission. I have no comments on that at this time.

CHAIR—Thank you. The committee prefers that evidence be taken in public, but, if you wish to give confidential evidence to the committee, you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

Mr Godfrey—No opening statement, but perhaps with your indulgence I will answer some of the questions which were asked earlier which I might be able to respond to.

CHAIR—I was going to ask you straight off if we might talk about the length of processing, the processing time. It was obviously a concern of committee members. Could you inform us why this is happening?

Mr Godfrey—In terms of processing times, we differentiate what we call priority cases, which are primarily detention cases, and our normal constitution caseload which I think have been described this morning as community-based. We have a 70-day turnaround time for priority cases, detention cases, and 118 days turnaround time for community-based cases.

Mr BAIRD—So 70 days as an average?

Mr Godfrey—Yes, 70 days as an average.

Mr BAIRD—As of when?

Mr Godfrey—As at the date of constitution to a member, to the date of finalisation of the case.

Mr BAIRD—But is that figure of 70 days for the past year or—

Mr Godfrey—That has been a time standard set, I think, almost since the inception of the tribunal in 1993.

CHAIR—And that is 70 days from the—

Mr Godfrey—Date of constitution to a member.

Mr BAIRD—That is on average, or—

Mr Godfrey—That is a time line that we expect members to do a case within.

Mr BAIRD—Why then did we see people who had been waiting in detention centres for 13 or 14 months for a decision from the RRT?

Mr Godfrey—I am not sure about the individual cases you are referring to.

Mr BAIRD—There are quite a lot.

Mr Godfrey—I can tell you that the average time it has taken to finalise a case this financial year is 58 days. I can also tell you that we have, as of last Monday, 38 cases where it is taking longer than that for us to finalise those cases. There are a number of reasons why it can take additional time: we may have to go offshore to get additional information in terms of the claims that are being lodged or it may be that the adviser is requesting more time to put in more submissions. If I could hazard a guess at what you may have been told—

Mr BAIRD—It is not a question of not being told.

Mr Godfrey—If you could clarify the case, I could perhaps give you what my understanding is.

Mr BAIRD—This is not individual cases. Senator McKiernan and I went to every detention centre in Australia. We saw three groups of on average 25 people and an extensive number of them had been there upwards of 14 months awaiting RRT decisions, which concerned us all. What is going on?

CHAIR—Are the detention centre applications for RRT a priority?

Mr Godfrey—Yes.

CHAIR—So they should be coming in under this 70-day turnaround.

Mr BAIRD—What is going on in terms of those figures? Obviously this was a big area of concern for us.

CHAIR—We also found that when we did our visit to some of the detention centres.

Mr Godfrey—The only explanation I can give for cases that may be taking that long is that they may have gone to the RRT and the RRT has made a decision to affirm the matter and it has been gone to the Federal Court. It could then come back from the Federal Court to the RRT. But in terms of these cases—and I have a list of all the cases as of 19 March—the longest standing detention case in front of the tribunal is 214 days.

CHAIR—Has that information been supplied to the committee?

Mr Godfrey—No, it is to do with individual material. But I am quite happy to say that the oldest case before the tribunal, as of 19 March, is 214 days.

CHAIR—So that is less than 12 months, which is not the information we have been given.

Mr BAIRD—That is not in line with what a lot of these people who are making complaints have said. Mind you, one has to say: why do we have to take 214 days? If we cannot make a decision before that time, something must be wrong. That is grossly too long by my book.

Mr Godfrey—By our book too but, at the same time, I am sure that you and the applicant would prefer to get a decision which is based on all the available facts.

Mr BAIRD—What are you saying? What type of facts could, on any base of justification, take 214 days?

Mr Godfrey—It could be a need, for instance, to clarify whether the documentation provided is actually genuine. There are a variety of reasons.

CHAIR—What percentage of applications to RRT from the priority applications are being processed within that 70-day period?

Mr Godfrey—A total of 80 per cent.

CHAIR—You must admit the other 20 per cent.

Mr BAIRD—Who are very vocal. In trying to get more information are there some government departments that are not being helpful so it easier to blame organisations like the RRT. According to your figures, the processing times are reasonable, but are there departments that are delaying you in getting information? Is it 214 days or 240 days?

Mr Godfrey—It is 214 days. That is one case.

Mr BAIRD—Are there individual departments that are not being cooperative?

Mr Godfrey—I do not know the circumstances of this particular case, but I would say that it is much more likely to be that we are trying to ascertain the genuineness of documents. When a person comes to the tribunal they make various claims, so we have to try to ascertain what the facts are. That can mean us having to go offshore and ask independent experts, not necessarily people through the Department of Foreign Affairs and Trade, for information.

We can also get into a situation where, if that information is obtained, we then have to put that information back to the applicant—so there would be considerable submissions to-and-from from advisers back to us and then back out to the adviser as more information was obtained. But these are the exceptions. We process the majority of cases very quickly.

Mr BAIRD—I would be interested in getting those figures. The extent of complaints about delays and people saying they were awaiting decisions from the RRT for very extensive periods of time is very surprising. It is not that I doubt your figures, but they are not in line with what we were told.

Mr Godfrey—I would be happy to follow up on any information that you might have, without going into the circumstances of the individual case.

CHAIR—We have heard of an increase in applications to the RRT. Has that increase had any impact on the time factor?

Mr Godfrey—A number of things have impacted on time factors. Just to make it clear, 13 per cent of our caseload at the moment are detention cases. In most years it is less than 10 per cent.

Mr BAIRD—Of that 13 per cent, what percentage are successful.

Mr Godfrey—It is 33 per cent so far this year.

Mr RIPOLL—If the disincentive packages are in place and are working, how much has your workload been reduced by?

Mr Godfrey—My workload is increasing.

Mr RIPOLL—Looking at some of the figures here, there is a proportion of people coming with advisers and that figure has been going up since 1995. How can you explain what is going on there?

Mr Godfrey—I am not sure that I can explain it other than to say that, perhaps as the law has developed in Australia, and since we began to operate in 1993, there has been a feeling on the part of most applicants that they would prefer to be represented before us.

CHAIR—As a follow up to that, have you found that, with advisers there, applications to the RRT are better prepared, and more substantial? Obviously it is a means to an end—they want their claims to be successful—but have you noticed that, with an advisory capacity there, and with the increase in the use of those advisers, there has been a change in the way those applications have been presented?

Mr Godfrey—I will answer that by pointing out another phenomenon that is increasing in the tribunal, and that is the number of cases that are coming to the tribunal where the applicant is declining to come to a hearing. The tribunal have to offer every applicant an opportunity for a hearing. The department does not; the tribunal have to offer it. We have seen over the last two

or three years almost a 50 per cent rate of people not attending the hearing. We have also noticed that a considerable number of those people are represented by migration agents or advisers. On the one hand, we have some extremely competent and very well-qualified advisers who represent their clients and provide very detailed submissions to the tribunal, which I am sure the tribunal members all find universally useful. On the other hand, we have a group of people who are applying to the tribunal, declining the offer of a hearing but are also represented by migration agents.

CHAIR—Why do you think that is happening?

Mr Godfrey—I think it goes to your earlier discussion about people who are in the system and why people are in the system. Fairly clearly, when people are not coming before us, I cannot speculate as to why they are not coming before us and why they are being represented.

Mr RIPOLL—If there is a 50 per cent rate of increase—

Mr Godfrey—No, it is not a 50 per cent rate of increase; it is an actual rate of 50 per cent of people not turning up.

Mr RIPOLL—So they are not presenting themselves to the RRT. Are those people being represented in their absence by a migration agent?

Mr Godfrey—No, the migration agent is not attending either.

Mr RIPOLL—No-one is attending—

Mr Godfrey—No-one is attending.

Mr RIPOLL—but they are represented otherwise by a migration agent. Could it not be the case, based on other evidence we have heard at previous hearings, that migration agents are actually advising their clients not to go?

Mr Godfrey—It is possible but I cannot follow your rationale for why they should not wish to put their case face to face. It is worth noting, for the committee's information, that we have been sufficiently concerned to raise this matter with the Migration Agents Registration Authority.

CHAIR—Do you have any figures, on the 50 per cent who are not appearing before you, of the success rate of those applications?

Mr Godfrey—Yes, a zero success rate.

CHAIR—So zero; none of them are getting through then.

Mr Godfrey—When the case is constituted for a member, if a member decides that on the papers they are able to make a decision which is favourable to the applicant—in other words, to set the matter aside—then the matter is set aside. In the other 99.5 per cent of cases the appli-

cant is told that the member is unable to make a favourable decision on the papers and invites the person to come for a hearing. Of that 99.5 per cent 50 per cent are then choosing not to turn up.

Mr RIPOLL—So it means they are being pre-advised of the decision already—

Mr Godfrey—No.

Mr RIPOLL—To an extent?

Mr Godfrey—No. It is just on the basis of the papers, and do not forget that a submission that comes into us can vary from a very bald statement of one paragraph to 10 to 20 pages.

CHAIR—So they are advised that they need to supply more or are invited in for an interview in which to put forward their case?

Mr Godfrey—Yes, exactly.

Senator McKIERNAN—Can you clarify where that 50 per cent comes from? Is it in the detail given by the department in its submission to us?

Mr Godfrey—In the interests of being precise—

Senator McKIERNAN—I think it is actually important to be precise in inquiries such as this.

Mr Godfrey—At the end of January the figure is 41 per cent. Looking at the caseload that is with members at the moment, I am confident that it is going to be over 50 per cent by the end of the financial year.

Senator McKIERNAN—The department gives a figure in its submission—on page 24 at table 4.6.1—which is an average. In 1997-98 it was 33.5, in 1998-99 it was 33.8 and in 1999-2000 it was 36.2.

Mr Godfrey—As you heard earlier, I understand that these figures were based on what is described as a cohort, but it does not appear to us to include the PRC in the cohort, and for us the PRC has been a very—

Senator McKIERNAN—It seems to me that it is not saying that it is—oh, yes, it is compiled with statistics.

Mr Godfrey—I think it is further back in that section somewhere. I can recall that because the figures did look a bit strange at first glance to me, checking and seeing that there is an exclusion of the PRC. That makes a very big difference because at the moment—for this financial year, at the end of February—we are running at 360 people not turning up out of 380. As I was saying, the Chinese caseload traditionally has a very high percentage of no-shows.

Senator McKIERNAN—If a large group like that were left out of the statistics, that could distort the percentages dramatically.

Mr Godfrey—Yes.

Senator McKIERNAN—That is part of the difficulty I had with the department's submission earlier. It is not something that I want to put to you and ask you—or the tribunal—to verify what is in the department's submission, but I am sure they are listening and will come back to us with the precise, accurate, figures to give us a proper understanding of the subject matter that we are looking at. I accept the rationale of breaking the figures down between high producing countries and low producing countries. Does the tribunal do that? Can you do that?

Mr Godfrey—We tried to do it in one of the attachments to the submission in the sense that we gave you applications lodged with the RRT by financial year for specified countries. You will notice that we have included six countries in there. They are not a random choice for us because they are the six countries that we have—given the situation of our caseload three years ago, we took a conscious decision in the tribunal to target some of those high-volume countries and we have done that. I am not going to claim, though, that having done that we have necessarily seen a major reduction in the application rates from those countries.

Senator McKIERNAN—The argument is that this $1,000 fee is going to stop abuse of the refugee determination system. It is arguable that most of the abuse would come from those people who come from lower refugee producing countries. I am trying to get information that will support the theory that there is in fact abuse occurring and it is occurring from people who come from low refugee producing nationalities. I am not so certain that the information which I appreciated receiving from the tribunal is actually providing me with that information because it is not giving me comparative figures from the high producing countries.

Mr Godfrey—We can certainly provide the figures for the totality of the countries. Whether it provides the outcome that you are suggesting will be a matter for you to have a look at. Are you talking about no shows from countries—

Senator McKIERNAN—I have not got to the no shows yet.

Mr Godfrey—Application rates obviously will vary depending on what the situation is in the country concerned. For instance, at the moment we are seeing an increase in the number of applications from people from Iran. We have seen an increase from Iraq over the last few years also. We have not noticed any major difference in any country other than those half a dozen countries that I have mentioned, except for India. India is a country which is increasing in terms of our workload. It is also a country which we are now noticing has a reasonably high percentage of no show applicants.

Senator McKIERNAN—What I was really after was to do with the information supplied to us on the 10 countries, starting with the People's Republic of China, then Indonesia and India. By volume they may produce large numbers of individuals cases, but, because of the volumes of applications, the percentage might be low. I am looking for some method of measurement to determine where perhaps abuse might be occurring, if indeed abuse is occurring.

Mr Godfrey—I do not think we are going to get it from purely looking at the application rates, to be honest. I suggest that we have to look at the no show applications.

Senator McKIERNAN—I appreciate that the tribunal is not in a position to do any further work on the no shows to see whether you can trace them through and question why they did not front. Has any attempt ever been made, either by the tribunal or through somebody who is doing a master's and wants to write a thesis on it?

Mr Godfrey—As the applicants do not contact us, we have no way of knowing why they did not turn up. As I said, we are sufficiently concerned to note that a considerable number of those people were represented by migration agents, so we did take the trouble to do some research on the number of cases involved and the outcomes involved and to refer the matter to MARA. I would expect that MARA in due course may well produce a finding which will in some way answer the question that you are posing, because they will have spoken to the agents concerned.

Senator McKIERNAN—In terms of the people who are advising applicants to the tribunal, do you have a breakdown of where they come from? Would they be people who are just friends or persons in the community, would they be from community legal centres, would they be lawyers in their own right, or would they be registered migration agents who may or may not be lawyers as well? Do you collect that type of information?

Mr Godfrey—We tended to have a fairly simple box which was ticked, which said 'Represented by adviser', which unfortunately did not give us that detail. We are, however, further advanced in terms of our statistical record keeping and we could probably get that out for at least this financial year for you, but I would not be able to guarantee I could get it for previous financial years.

Senator McKIERNAN—I understand priority is given to applicants who are in detention. Is there a further priority given to persons who may be working or who may not be working or not have working rights, as opposed to those who do not have working rights because they have applied after the 45-day period?

Mr Godfrey—We have a system where people who are experiencing financial hardship can advise us through the Red Cross, which runs a referral centre drawing on most of the people who work with the asylum seekers in NGO networks. We have a standing arrangement with them whereby they can advise the tribunal of those cases which do require priority because of financial hardship. That does not quite get to your answer, I know, but that is in place. It is also open to advisers or applicants to seek to have their case expedited. The take-up rate on those, in terms of the people who actually approach us, is quite low. We ourselves do not have any automatic trigger which says someone who has been here more than 45 days before lodging the application at primary should be treated any differently from somebody within the first 45 days.

Senator McKIERNAN—Do you have any statistics on no-shows from those who would have a working visa as opposed to those who do not have a working visa?

Mr Godfrey—We do not. I suspect that, again, for this financial year we may be able to backtrack and find that information for you, based solely on date of arrival in Australia and date of application of primary. It may be fairly crude, but we could look at that for you.

Mr BAIRD—I was interested in terms of the figure of 33 per cent of the detainees who were affected this year.

Mr Godfrey—That was 33 per cent set aside.

Mr BAIRD—Of that 33 per cent, what percentage came from the 'high refugee producing countries'?

Mr Godfrey—I would say the vast percentage, but I would have to check it for you to be absolutely clear. I would suggest that the vast majority of the successful applicants so far this year will have come from Afghanistan, Iraq, Iran and Turkey—all countries that of course do not fall into the category you are mentioning.

Mr BAIRD—Is Iran regarded as been a high refugee producing country?

Mr Godfrey—In terms of the tribunal's statistical cut-off, yes. So far this financial year, 22.7 per cent of all Iranian applicants have been successful.

Mr BAIRD—In the detention centres, the biggest bulk that have been there the longest period of time some to be the Iranians, who are claiming that they are being discriminated against, and that if you are from Iraq or Afghanistan you are okay but if you are from Iran you are being refused. That does not bear out your figures.

Mr Godfrey—We would call anything over 10 per cent being from a relatively high refugee producing country.

Mr BAIRD—Of the community based applicants, of those set aside what percentage are from high refugee producing countries?

Mr Godfrey—I would have to take that on notice. Of the six countries that on our list as the highest so far this year, we have set aside nine cases out of 460 from PRC, three cases out of 553 from Indonesia, and no cases out of 398 from the Philippines.

Mr BAIRD—How many people do you have altogether working in the RRT?

Mr Godfrey—As members?

Mr BAIRD—Yes.

Mr Godfrey—At the more we are down to a fairly low figure. We have 50 members of whom 29 are full-time members. As you probably appreciate, one of the difficulties that tribunals face, with other tribunals, in the continuing uncertainty over the ART is that we have not been able to recruit members for a period of over a year. As we have been losing experienced members we have not been able to replace them with people who can continue to make the decisions. So this year we will have quite a low productivity figure compared to our usual productivity. That will be addressed next year.

Mr BAIRD—What about your budget?

Mr Godfrey—Our budget is based on a purchasing agreement with the department of finance. That gives us $2,400 per finalised application.

Mr BAIRD—Has that gone up or down in the last couple of years?

Mr Godfrey—It depends on how many cases we do. We have a base funding of $18 million, which represents 7,500 finalised applications. If we finalise more, then we get more money.

Mr BAIRD—How many locations is the RRT present at?

Mr Godfrey—We have registries in Sydney and Melbourne. We conduct hearings at Curtin, Port Hedland and Woomera, either by circuit or by video.

CHAIR—Thank you for your attendance today, Mr Godfrey and Ms Toohey. If there are any matters on which we might need additional information the secretary will write to you. You will be sent a copy of the transcript of your evidence to which you can make editorial corrections.

[11.24 a.m.]

BIOK, Ms ElizabethInternational Commission of Jurists of Australia, Council Member, International Commission of Jurists

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

CHAIR—Welcome. Do you have anything to add about the capacity in which you appear?

Mr Bitel—Last night we had a meeting of the Law Council of Australia migration and nationality subcommittee. The issue of today's proceedings was raised and I was asked to also wear the hat of the Law Council of Australia, so I do as a member of that committee.

Ms Biok—I am also a practitioner at the Legal Aid Commission of New South Wales, practising in refugee law.

CHAIR—Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of 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 a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Mr Bitel—We have not written a submission at this stage. What we did was that we adopted the submission that we had sent to the previous inquiry and said that we would be available to answer any further questions if we were asked to attend.

CHAIR—Okay. The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearing be held in camera, and the committee will consider your particular request. Mr Bitel, do you wish to make an opening statement?

Mr Bitel—There are a couple of things which we would like to say by way of updating and amplification. The first is that we would like the committee to consider, if it is minded to recommend to the parliament the continuation of the regulation, is that a waiver provision be incorporated into the new regulation similar to the one which exists for fees payable to the Migration Review Tribunal, appearing at regulation 4.13(4). We would submit that there is evidence of hardship, which has been given to the committee previously and which we believe continues to exist, which justifies the opportunity for a fee waiver to be made by the appropriate authorities, which presumably would be the registrar of the tribunal as is the case with the MRT fee.

The second point is that a problem has arisen which I would like the committee to have regard to, and that relates to the question of children born to protection visa applicants after the date of primary decision but whilst the parents have pending appeals before the Refugee Review Tribunal. The interpretation of the regulationsas currently applied—I think it is regulation 2.08—would seem to be that those children are not included in the applications of the parents

because they have been decided. There is a nice point on that issue but the current interpretation is that they are not included, which means that those babies have to have separate protection visa applications lodged on their behalf. As a practitioner, I have had cases where the children have had to make those applications. In one particular case of which I am aware, because I acted, I asked the departmental officer to withhold making a decision on the primary application until a determination had been made by the RRT on the parents' visa application, because I was concerned about the obligation that would flow to the child of having to lodge an appeal against the decision if it was refused at primary stage. The departmental officer was not prepared to wait and refused, so we had to lodge the appeal. If that appeal is unsuccessful, then the child will be burdened with a $1,000 fee.

The third issue which I would like to ask the committee to consider is the obligation to pay the fee in situations where people have lodged appeals to the Federal Court. Whilst those appeals are pending there are hefty fees which are payable to the Federal Court. As the committee would be aware, something like 20 per cent of appeals are either remitted by consent or are successful. There is a question as to whether the fee is then remitted if it is paid, but I think it is an area where there is a silence in the regulations which does need to be clarified.

Ms Biok—I would like to support Mr Bitel's comments on a waiver. As a practitioner of the Legal Aid Commission, I have seen cases where people have certainly been caused hardship by the $1,000 and I have seen the stress that has been put onto refugee families because of this $1,000 fee. I am also very concerned that people are very poorly advised, and I would like to see the department and the tribunal be a bit more comprehensive in community education. I feel that people could be given more information about what disadvantages they may face if they do not pay that $1,000. This applies especially to people who may wish to do an offshore application. I have seen quite a few people who come in who have been rejected by the tribunal, who then wish to go offshore and complete another application. They have not been made aware of how difficult it will be until they pay the $1,000. So it could be that perhaps the tribunal should produce some materials in community languages and should perhaps advertise this in the community press to make people more aware of that aspect. I do not feel there has been enough community education on it. If the department does mean this to be a deterrent, then it needs to be advertised.

Mr BAIRD—Why is there a hardship if in fact they are unsuccessful? If they are successful they do not pay; if they are unsuccessful they can leave the country and if they do not wish to return they are not forced to repay it. Why is it a hardship?

Ms Biok—There are some people who wish to make an offshore application. Given the amount of time that some people spend in Australia until they get their final decision from the RRT, they have formed relationships with Australian citizens. The understanding on which they leave is that they will then be sponsored back as partners. Before they can get their visa, they are then required to pay $1,000.

CHAIR—The fee is there to dissuade those people who are not genuine asylum seekers. They are not being asked to pay until the RRT has made that decision. I agree with my colleague. Where is the hardship if they are not having to pay until that decision is made? If the decision is against them, it would be said that they are not genuine asylum seekers.

Mr Bitel—I would not accept the statement that they are not genuine asylum seekers. With respect, that is imposing an interpretation on the vast range of asylum claimants. I think we gave evidence to this effect on the last occasion. To repeat it: there is a spectrum of people who make claims ranging from people who quite clearly are lodging fraudulent applications or abusive applications, who can be quite easily classified as claimants who are manifestly unfounded. There are applications which are made by people which blind Freddy would approve and which are approved, either by the department or by the tribunal. But there are a spectrum of applications coming from people both from countries which are refugee creating and from countries which may not necessarily be refugee creating but where in the individual cases there are particular fears which fall within the ambit of the convention. They are the difficult cases. Just because there is a finding by the tribunal that they are not people who are entitled to be granted a protection visa they are not refugees, it is not then appropriate to say in respect of all of those people that they are not genuine claimants. They have a well-founded fear but, having regard to the technicalities of the definition, they are just not people who are determined to be refugees. Those are the people that many of us have the greatest concern for, and where the hardship that Ms Biok talks of comes to light.

Mr BAIRD—The hardship comes not for those who are just simply going back and giving up but for those who want to come back as married or as partners in some way or on some other basis?

Mr Bitel—Yes.

Mr BAIRD—Okay.

CHAIR—You saying to us, too, that there is no information out there, whether it is from DIMA or the RRT, to warn people of that circumstances if they do not pay that fee. They cannot apply to come back until that fee—

Ms Biok—They cannot be granted a visa until that debt is then paid. I think we also have to look at the broader context of the number of people who are at the tribunal without representation and with very poor advice. There are a lot of people who may have been genuine refugees had they had good representation and somebody who could argue their case within the criteria of the convention.

I am employed by the Legal Aid Commission and in the last four years we have seen a major restriction on the amount of advice and amount of representation that we can give people. Very often, we see people after they have received a decision from the RRT. They are wanting to know about a Federal Court. We interview them and we have to tell them that they cannot go to the Federal Court because these factual matters that were not raised at the tribunal can now not be raised before the Federal Court. Had they been represented or even advised it could have been a very different situation. These are people who may have got through, may not be paying the $1,000 and may not be forced to go offshore.

I think we have to look at the broad spectrum of what has happened here, that now the immigration department is often making very quick and cursory determinations. A lot of people are going to the RRT because they have not been interviewed by the department, they have not had the opportunity to put forward all of their materials and when they get to the RRT they do

not have a representative and they are not advised. It is a large problem. It is not just the problem of the fee.

CHAIR—The RRT gave us figures this morning that indicate that the percentage of people who have an adviser with them has indeed risen.

Mr Bitel—I did not hear the evidence this morning from the RRT. I am perhaps not surprised. I think there has been a fall in numbers, from the huge numbers which were going through in the late 1990s, largely because of the abuse of applications from non refugee creating countries. That may well be the case. Just because there are adviser does not necessarily mean—

CHAIR—So you are questioning the type of advice these people are getting, whether they be migration agents—I mean, are their concerns in that area?

Ms Biok—Most certainly. We see a lot of people at the Legal Aid Commission who have had representation but key, factual issues and translations of important documents have not been done. I am also very concerned by people who are represented at the tribunal by unregistered migration agents. There are certainly people in key communities, who are encouraging people to go to the tribunal, who have no legal experience and for whom it is just a profit-making venture.

Mr Bitel—To extend that, there are a lot of interpreters in community languages who take it on themselves to become migration advisers but do not put their names to the application forms and who give incorrect advice. Again, as a practitioner, it is not uncommon for me to have applicants coming to me, and you might see this from time to time in reported RRT decisions, saying, 'I went to see Joe Bloggs, the adviser. He said that I have to say this or that there were a range of statements I could make.' It is a bit like buying a packet of tea from the shelf at David Jones: you select which brand you want. They select a statement. It is presented to them and quite often the forms are completed in blank after the applicants have left. This sort of horrific experience is happening. Yesterday afternoon I saw a lady—it was not an RRT decision; it was an MRT decisions—where the member in the decision specifically expressed concerns about the fact that the adviser, who is a registered migration adviser and in fact had previously worked for a member of parliament as his electorate secretary, had done just that.

Mr RIPOLL—It is interesting, with that question of advisers, we have data that states that there are now more advisers. We were just told by the RRT that 50 per cent, or thereabouts, of all cases are not represented and that of those unrepresented cases, where the applicant does not come forward, virtually all of those are unsuccessful.

Mr Bitel—I do not think that is a new problem. I think it has been around for awhile. Again, one of the problems is that you are dealing with such a complex and technical area. Trying to work one's way through the maze that is the migration legislation is very complex, as obviously members of the committee would be aware. For a person for whom English is not the first language having to deal with these complexities, and understand how the refugee convention works and understand the morass of Federal Court and High Court decisions on the interpretation, is extraordinarily complex. A lot of people just adopt the easy course of not doing it correctly.

I would just take up a point that Ms Biok mentioned and one that we mentioned on the previous occasion: all too frequently the first time people get to tell their story to somebody is when they get to the RRT, and the department, since about March 1997, has adopted the practice of dealing with most cases on the papers. That is a practice that continues. Certainly there is an increase in the number of departmental interviews. But, by and large, the vast majority of cases, in my experience—and I stand to be corrected by figures that I suppose the department can give you—are just assessed on the papers. This means that people do not really know what they are on about. They have the forms, admittedly, to read, but they are not in community languages. They get their refusal, which tells them, 'You can lodge an appeal to the RRT; you have 28 days to do so, plus seven days.' They lodge their appeals, and then they get their hearings—for those who do attend the hearings.

Mr RIPOLL—In terms of abuse of the system, sure, there is some abuse. There is no doubt about that, and I think everyone agrees there is some abuse—and I am certainly concerned that we should reduce that amount of abuse and put some measures in place that would affect that. I am particularly concerned that the $1,000 in itself, or even as part of a package, is not directly linked to any figures or statistics that show any reduction in abuse or reduction in the number of applications. I think it is hard, as you have pointed out, to weed out or isolate those cases that are specifically abuse from those cases that are genuine, ought to be heard but may not meet the criteria and, therefore, form a different category. I would ask both of you whether you think that the $1,000 unsuccessful fee as a deterrent, being part of the package of measures to curb abuse, is a fair and equitable way of dealing with people who would otherwise think they are genuine.

Mr Bitel—We opened our submission by suggesting that the committee might consider the waiver provision on applications. We suggested that for the reason you have just raised, and we thought that was a possible, acceptable compromise. It is not as though it is something that is new; it exists for the other tribunal and it exists in most courts that an application could be made to waive the fees.

Senator McKIERNAN—There is great difficulty with that, because this fee is an 'after the decision' fee rather than—

Mr Bitel—But a person can still make an application post decision. When they get their letter saying, 'You've got a $1,000 fee to pay,' that letter can say, 'You've got seven days to make an application to waive the fee if you meet the criteria.'

Mr BAIRD—Make an application to whom?

Mr Bitel—To the registry of the RRT or to the department. In the MRT, it is to the MRT. In the RRT, it could be to the registrar—

CHAIR—You would like that enclosed in the letter?

Mr Bitel—I would like it in the regulation. It is regulation 4.134. Does anyone have a copy? I did not bring them with me.

Mr RIPOLL—Do you want a copy of the regulation?

Mr Bitel—No. Regulation 4.134 deals with the Migration Review Tribunal, not the Refugee Review Tribunal.

Senator McKIERNAN—If this $1,000 fee is any disincentive at all against a mala fide applicant, isn't inserting the waiver automatically removing the disincentive to the mala fides?

Mr Bitel—In my experience and trying to be accurate, I cannot remember a person coming to me and saying—

Senator McKIERNAN—It was a simple question, Mr Bitel. Why not just give me a precise answer?

Mr Bitel—Because sometimes simple questions contain a multitude of answers, and it is very difficult to give a yes or no answer.

Senator McKIERNAN—After reading the department's submission and hearing from the department, I now wonder whether this $1,000 fee serves any purpose at all to the Australian community. Now you have come along, after holding a very strong position in opposition to the fee, offering something that you suggest is a halfway house; I suggest that it is a lot more than that. I ask you: in putting the waiver clause there, are you not removing any form of barrier to—and this is the one I am concentrating on at the moment—the mala fide applicant?

Ms Biok—The mala fide applicant who has been here for three years, waiting for his application to be finally determined, will go home and will not care at all.

Senator McKIERNAN—You should get a job with the department. Why don't you answer the question? The question is: would inserting a waiver into the regulation not remove any incentives there are for mala fides?

Mr Bitel—No, I do not think so. Last time we submitted very strongly to the committee that we believed that the fee should be removed. The committee did not adopt that recommendation. We came today with the assumption that the fee would continue, and that is why we thought of this as another option for you to consider. If the committee were minded to take the view that there will not be any fee, then obviously we would endorse that.

Senator McKIERNAN—I certainly have not made a decision yet; I have not arrived at a position. I am looking for the evidence and, as the others would be aware, I am disappointed with what we got from the department. I am now confused by what you are putting to me. What would be the legal implications of inserting a waiver clause into the regulation? Would there be a legal limitation to it?

Ms Biok—If we had the case of somebody not meeting the criteria of the refugee convention either because—

Senator McKIERNAN—That is all we are talking about.

Ms Biok—Yes, but for humanitarian reasons, they may be able to stay in Australia; they may be granted a ministerial intervention. They may be the sorts of people who could then write, after their RRT decision, and ask for the waiver. We get RRT decisions that say, 'This is a very strong humanitarian case.'

Senator McKIERNAN—Sure, I understand.

Mr BAIRD—Wouldn't they get that back anyway?

Mr Bitel—Yes, that is currently the case.

Ms Biok—But that would remove any stress for them at the time they get their decision.

Senator McKIERNAN—Prior to their making a request for a 417 ministerial intervention, is there any obligation for them to pay the $1,000?

Mr Bitel—The regulations provide that they must make the payment within seven days, so there is a legal obligation to pay.

Senator McKIERNAN—If they are a humanitarian applicant and do not have the money to pay the fee but are making a request to the minister, which automatically grants them a bridging visa, is ministerial consideration halted because the fee has not been paid?

Mr Bitel—In practice, no. But in law, under the current regime, they have a legal obligation to make the payment.

Senator McKIERNAN—I will ask then: in practice, is a humanitarian applicant disadvantaged by the current regulation that requires them to pay the $1,000 within seven days of the decision?

Mr Bitel—Yes, if they want to comply with the law, because they have to come up with $1,000.

Senator McKIERNAN—So how are they then disadvantaged, in practical terms?

Mr Bitel—They have to come up with $1,000.

Senator McKIERNAN—In practical terms, if they do not have the $1,000 and are making a request for a ministerial consideration—

Mr Bitel—It is conceivable that the department would see it and say, 'We will not process the application until you have made the $1,000 payment.' In practical terms, I have not seen that happen.

Senator McKIERNAN—Neither have I—and that is really what I wanted you to say, Mr Bitel. But I thank you for taking the time of the committee to finally come around to that

situation. If we were to follow the course of action that you suggest and recommend that a waiver be inserted, would it not be the mala fide applicant who would benefit by that?

Mr Bitel—In my experience, no. The mala fide applicants are usually unconcerned about paying the fee, because they are not going to pay it anyway. They have never had the intention to pay it. They have always intended to stay here and abuse the system and then leave as soon as it is appropriate. So the recovery of the fee is usually not an option.

Senator McKIERNAN—You have mentioned the Law Council and its meeting last night. Will the committee be receiving a submission from the Law Council?

Mr Bitel—I do not think so, no. I was merely told to come here—

Mr BAIRD—But there are lawyers benefiting off the system though.

Mr Bitel—I will go back to the council and ask them that question, but I do not think they will be. It was merely as a courtesy to the committee that I was saying I would here also wearing the Law Council's hat.

Senator McKIERNAN—One of the big issues occupying the mind of the committee during the previous consideration of this regulation was that genuine asylum seekers might be halted from making application because of the $1,000 fee. At that particular time we were not able to get any evidence, and it was one of the factors that certainly lent my mind to saying that there another sunset clause should be considered so that we could collect that evidence. Is there any evidence from you, from your organisation or that you are aware of that would point the committee to a genuine refugee applicant not proceeding with an application because of the fact that, if unsuccessful, they would be liable to a $1,000 fee?

Ms Biok—Certainly, in my experience, there is anecdotal evidence about a lot of asylum seeking families, especially, who are caused great stress when they are advised that they may have to pay $1,000. As an adviser, you can sit with them and say, 'I think you have a good case, I think you will be successful at the tribunal; but I must warn you that, if you are not, you may have to pay $1,000.' For families who are finding it very hard to survive here—and the committee will be aware of the difficulty for asylum seeking families in getting any financial assistance or accommodation—this can be another issue that causes them great stress.

Senator McKIERNAN—But the evidence we got last time was that, despite this, the application still proceeded.

Mr Bitel—I must say that, in my experience, with an application where there has been a genuine fear, I have not come across a person who has said, 'I won't pursue merely because of the existence of the potential liability to pay the $1,000 fee.'

CHAIR—Thank you for your attendance here today. If there are any matters on which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence, to which you can make editorial corrections. Thank you for appearing this morning.

[11.52 a.m.]

ALEXANDROU, Mr Alec, Former Acting Coordinator, Refugee Advice and Casework Service (Australia) Inc.

CHAIR—Welcome.

Mr Alexandrou—Thank you. Just for the committee's information, I was the previous acting coordinator of RACS. Subsequent to the submission about a month ago, I have moved on, but I have been asked by RACS to appear on their behalf.

CHAIR—Thank you. 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 the proceedings of the parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Mr Alexandrou—No.

CHAIR—The committee prefers that evidence be taken in public. But, if you wish to give confidential evidence to the committee, you may request that the hearings be held in camera, and the committee will consider your particular request. Before we ask you questions, do you wish to make an opening statement?

Mr Alexandrou—I think it is conveyed in the submission, and I would just be repeating myself.

CHAIR—There has been another part of the submission. It states:

If applicants are granted permission to work, this will relieve the pressure on non-government assistance agencies.

Would you like to expand on that? How do you feel that would help applicants to the RRT?

Mr Alexandrou—That is one of the points that is currently a question in the current circumstances. If that did eventuate, it would allay a lot of pressure on families and applicants. It would give them the opportunity at least to be more financially able, and it would allay a lot of the stress and emotional distress that is associated with this environment they find themselves in. I would applaud that.

CHAIR—You would like to see an extension of that, so that everybody would have the opportunity to work while waiting.

Mr Alexandrou—I think so, yes.

CHAIR—Do you see the $1,000 as being a deterrent? What sort of impact has it had on the people you have been dealing with?

Mr Alexandrou—RACS are totally involved with detention applicants and boat people, et cetera; we solely are involved with those types of cases. We do have some community cases, but the majority of cases are those detained in all of the centres around Australia. Given that, I think the $1,000 requirement post the RRT decision does impact on them when we meet them initially to advise them of the procedures and assist them with their forms, et cetera.

CHAIR—Are they aware of the $1,000 fee?

Mr Alexandrou—In our process of conveying to them the procedural requirements, et cetera, we mention that.

CHAIR—Have they been aware of it before you have spoken to them?

Mr Alexandrou—No. The majority, as I have said, are 'boat people', so they are totally ignorant of the situation here. They arrive, we see them probably within a week or two of arrival, and they are still traumatised—

CHAIR—I am not sure that they are all ignorant.

Mr Alexandrou—I take heed of that, but the majority that I have had experience with are traumatised—you can see it in their eyes; they are very affected by their travels, post involvement in their own countries, et cetera. When they are confronted by the requirements and when we reach the point of conveying, 'If it is approved at the primary level, you will be granted a TPV, et cetera, but if it reaches the RRT and it is rejected, you have these other avenues,' as has been referred to, they are taken aback by that. Again, we are using interpreters. They are totally ignorant of that situation until we tell them. It does have an impact on their state of mind, on top of everything else.

CHAIR—Your case load, though, as you have just said, is dealing mainly with boat people, so these people are in detention. The dot point about the work is not really relevant, either, because they are not in the community.

Mr Alexandrou—True, yes. I can equate that to those whom we meet through the community referral area. The gamut or spectrum is large, but we are concentrating on a finite situation with regard to people in the centres. Ultimately, the issue of that work right, of course, is not a major concern at that stage. If I may digress to those whom we see as referrals from the community, again we are confronting people who may have been misdirected or who may have applied but have exhausted their avenue of appeal and have been referred to us as 'experts' to try to alleviate their concerns with a ministerial or whatever may be available at that time. At that stage, some of those people have been denied work rights for a period of time because of non-compliance with the 45-day requirement, et cetera. On that basis, the people who have fallen into those categories definitely would be more appreciative of that recommendation.

CHAIR—Have you any concerns about the length of processing with the RRT—and, along with that, is your service providing caseworkers or advisers to go to the RRT with your clients?

Mr Alexandrou—Definitely.

CHAIR—Is there concern about the processing time?

Mr Alexandrou—RACS has always done so from the primary level through to the ministerial level, if required. A caseworker attends hearings at the primary level. If the matter is required to go to the tribunal, again assistance is provided for the submission and the subsequent hearing and follow-up.

CHAIR—So they have a caseworker, in fact, who stays with that person all the way through?

Mr Alexandrou—Right through, yes.

CHAIR—What is the processing time?

Mr Alexandrou—It has improved, I must admit, and the tribunal should be applauded for that. In the past, as you probably are aware, it has taken many months. I do not know the finite times, but most recently cases in which RACS has been involved were at the tribunal. Just three months ago a case was rejected. Again, it involved a detainee at Port Hedland, and it was resolved only in December—the last day before Christmas. It took nearly 12 months. I think that the RRT has improved in respect of the time factor, but this case stands out in my mind because I was involved from the beginning until the end. A 12-month gap is a long time for a detainee to withstand the strain and stress. Eventually that person was approved. I appreciate that there are other factors to be considered, maybe security reasons and so on, but ultimately 12 months is a long time for a person to be kept in—I hate to use the word—incarceration—

CHAIR—Detention.

Mr Alexandrou—In detention.

Senator McKIERNAN—I was a bit surprised to hear that the majority of RACS casework relates to detention cases. That is a change from previous appearances of RACS before the committee. Could you give us a percentage breakdown of that and how it relates to community applicants?

Mr Alexandrou—I can only comment in respect of the last 12 months that I have been involved with RACS. In that period, we have undertaken three or four task forces which have made up probably 400 or 500 specific cases. Over that 12-month period, those cases have been progressively processed. There have been rejections of some which we have followed through. In the past few months, the community side has not stopped—it is always there—but we are a small organisation; we have only four staff so we cannot deal with a million cases.

Senator McKIERNAN—Can you give me a breakdown on what it is?

Mr Alexandrou—Not offhand, I could not, I am sorry.

Senator McKIERNAN—The other thing that I am surprised about is that the $1,000 fee did not use to be a feature of the detention cases. To the best of my recollection, it was not raised during the previous inquiry. I could be corrected, but from the submissions we have received to

this inquiry, it has not been raised as an issue for detention cases. However, you raise it as an issue here today.

Mr Alexandrou—In respect of a number of the cases we have been involved in through the various task forces, some of which have reached the RRT and have been rejected and are still kept in detention pending further Federal Court or ministerial consideration, the $1,000 post-RRT letter has been sent to the applicant at the respective centre. Realistically, we have written on their behalf to the department requesting that they should consider not 'waiving' it but waiting to see the outcome because these people do not have the financial capacity to meet the repayment, given the fact that they have been in detention.

Senator McKIERNAN—So is it only becoming an issue post decision?

Mr Alexandrou—Do you mean for the detainees? Definitely, yes.

Senator McKIERNAN—But I thought you said in your opening comments that it was when a representative of RACS was explaining to an applicant at the beginning of the process that it became an issue with them. Which is it? Is it an issue from the beginning or does it become an issue when the negative RRT decision goes out and the letter is sent?

Mr Alexandrou—I think it impacts on these people at the initial stage, when we are helping them with their primary claims. However, the practicality of it comes to the fore if and when their specific case does not satisfy at the primary stage and it then reaches the RRT. The impact of that reality is cemented if and when the RRT rejects. I think it does impact on these people, as I said before, with their emotional state, et cetera, and, more so, at that stage after the—

Senator McKIERNAN—Are they concerned that they have a debt to the Commonwealth and they want to comply with and obey Australia's laws?

Mr Alexandrou—I would assume that they would love to comply if they had the capacity, given their situation. That is my feeling, but it is very difficult to insert oneself in their mind.

Senator McKIERNAN—But, with all due respect, that is what you have been doing. During the course of your presentation this morning, you have been inserting your personal views on it and I am testing those views to see where the concrete examples come from. I believe that is reasonably legitimate because it has not been an issue in the course of the previous inquiry and it was not an issue with any other submissions until your verbal comments this afternoon.

Mr Alexandrou—Sorry. I can only reiterate the fact that in respect of the cases RACS has been involved with in the task forces it has undertaken over the last 12 months or so, the culmination of these issues is now coming to the fore given the time frame cases have taken to reach the RRT, as I mentioned before. It was at that stage that we were becoming aware of the impact of the post-RRT letter.

Senator McKIERNAN—Are you in a position to talk about the original RACS submission?

Mr Alexandrou—No. I only did the most recent one—I was not privy to the previous one.

Senator McKIERNAN—Okay.

Mr RIPOLL—I have a couple of simple questions. In your view, is there any reason why more of the debt is being collected by the Commonwealth? There has actually been a significant increase in the last two years of the $1,000 debt being collected, so it is an ample amount of revenue in terms of cost recovery. I am asking for an opinion as to why that might be the case.

Mr Alexandrou—To follow on from the previous speakers, whom I think encapsulated it: maybe some of these applicants have, during the waiting time, formed a relationship which has led them to decide to go offshore, et cetera. That has required that payment to be made to facilitate their ongoing offshore application. That could be one factor to be considered in regard to your statement about the higher level of collection—

Mr RIPOLL—There is not only a bigger quantity but also a bigger percentage being paid. In your work, have you come across any cases where the $1,000 fee has been a deterrent to people applying? Again, I am asking for an opinion, a view or any examples you have come across. When you have informed people that if they are not successful with the RRT they will have a post-decision payment of $1,000, have any said, 'I won't apply then'?

Mr Alexandrou—In the years I have been doing this, I have not.

CHAIR—Thank you for your attendance here today. If there are any matters on which we need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence, to which you can make corrections.

Resolved (on motion by **Senator McKiernan**):

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

Committee adjourned at 12.07 p.m.