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JOINT STANDING COMMITTEE ON MIGRATION

Reference: 2001 Review of Migration Regulation 4.31B

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JOINT COMMITTEE ON MIGRATION

Monday, 2 April 2001

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

Senators and members in attendance: Senators Bartlett and Tierney and Mrs Irwin, Mrs May and Mr Ripoll

Terms of reference for the inquiry:

2001 Review of Migration Regulation 4.31B

WITNESSES

Committee met at 10.33 a.m.

CHAIR—I 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 was 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 thorough assessment to be made of its effectiveness.

With the approach of the sunset clause, dated 30 June 2001, the minister again asked the committee to review the regulation. The committee has received 23 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 at the hearing.

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

ILLINGWORTH, Mr Robert Laurence Mark, Assistant Secretary, Offshore Protection Branch, Refugee and Humanitarian Division, Department of Immigration and Multicultural Affairs

METCALFE, Mr Andrew Edgar Francis, Deputy Secretary, Department of Immigration and Multicultural Affairs

CHAIR— I welcome witnesses from the Department of Immigration and Multicultural Affairs to give evidence. Although the committee does not require witnesses to give evidence under oath you should all understand that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of 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 that you would like to make to your submission?

Mr Metcalfe—No.

CHAIR—The committee prefers that all 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. Mr Metcalfe, before we ask you some questions, do you wish to make an opening statement?

Mr Metcalfe—Yes, thank you, Madam Chair. Indeed, if it is not inappropriate, this is the first occasion I have had to welcome you as chair of this committee. There have been former chairs

from South Australia and Western Australia and it is good to see a Queenslander in the job. Ms Bedlington and I, having come from that state, certainly agree on that and I am sure Mr Ripoll also concurs.

CHAIR—Thank you.

Mr Metcalfe—On a serious note, Madam Chair, let me say that we are grateful for the opportunity to again appear before the committee to assist in its review of the migration regulation 4.31B, the post RRT fee decision. We appreciate also the opportunity we were given to supply our supplementary submission to the committee to try to address questions and concerns raised by the committee at our last appearance. This is obviously a complex area of administration. Application rates at the primary stage are volatile and there are a range of factors which affect decisions taken by applicants who apply to the RRT for a review of a decision. Therefore we are looking for trends which may or may not be apparent if we are looking at individual cases or small groups.

The fee was introduced as part of the broader package directed at misuse of protection visa processes at primary and review stages. Our analysis and the range of evidence and indicators point to the existence of such misuse. There is no simple answer for the problem of misuse of the protection visa process and we are not attempting to claim that the fee is the panacea for eliminating mala fide applications to the RRT. This is not least because of the need to ensure that any measures to address misuse do not impact on access to the system for bona fide asylum seekers. We are very mindful of the need to get the balance right here. It is also not possible to conclusively demonstrate what the misuse rate might have been if the package had not been introduced. Nor is it possible to conclusively distinguish the extent to which individual elements of the package have contributed to addressing misuse. However, having said that, we believe that there are some broad conclusions that the committee could draw.

Firstly, the package including the fee has had no discernible adverse impact on bona fide asylum seekers. All of our analysis of review take-up and flow-on rates by high refugee producing nationalities show no adverse impact on these groups. It is particularly noteworthy that at neither the first review of the sunset clause in 1999 nor at this review, to our knowledge, has any case been identified or any person with genuine claims—bona fide claims—been discouraged from applying for RRT review because of their potential liability to pay the $1,000 fee or by other elements of the package of measures. We note in particular that the committee specifically questioned witnesses representing the International Commission of Jurists, the Legal Aid Commission of New South Wales and the Refugee Advice and Casework Service on this point on 22 March this year and received confirmation from those witnesses that they knew of no such case.

Secondly, there are clear statistical indications that there was a change in the behaviour of potential RRT applicants from low refugee producing countries after the introduction of the fee. The proportion of all RRT applications being made by this group of PV applicants dropped by one third, while the share of applicants from high refugee producing nationalities increased. While the share of RRT applications made by people from low refugee producing countries has been slowly rising since 1998-99, it has still not returned to its pre-fee level.

Thirdly, it seems clear to us that the package, including the fee, has had a substantial and lasting impact on the rate at which low refugee producing nationalities were flowing on to the review process. Before the fee was introduced, the review take-up rate by low refugee producing nationalities was rapidly increasing and was on course to reach and, indeed, exceed the average take-up rate for all nationalities. The fee appears to have significantly reduced this rate of increase. Since its introduction, the review take-up rate by low refugee producing nationalities has remained below, and roughly parallel to, the take-up rate for all nationalities.

It is also reasonable to conclude that the fee has had an immediate and positive effect and that the review application rates of low refugee producing nationalities would have been higher over the last three years if a fee were not in place and would be higher in the future if it were removed.

In our two submissions to this inquiry we have provided a substantial body of information, particularly statistical information. We are confident that this is sufficient to address the particular matters the committee has raised with us and to assist the committee in its evaluation of the sunset clause. However, I would like to reiterate that the department stands ready—as it does to provide information to any parliamentary committee—should you believe that there are any further issues that we could assist in providing data on or other ways of interpreting the data, to provide that assistance.

Finally, there is one issue that I understand came up in discussion in the previous hearing and that we have not covered in our supplementary submission, because it was not specifically covered in the request for that information. That issue relates to the apparent discrepancy between information provided in the department's submissions to this committee and information that we have provided to the human rights subcommittee of the Joint Standing on Foreign Affairs Defence and Trade, of which there is joint membership amongst some members of this committee.

I can advise that the data provided to the Human Rights Subcommittee related only to detainees who were unauthorised boat arrivals. The information we have provided here related initially to non-detainee populations, and we have now provided the information relating to detainees. But the particular information provided to that inquiry by the Human Rights Subcommittee related to detainees who were unauthorised boat arrivals. The reason for that is that that committee has been looking at the specific issue of immigration detention, and that was the cohort of people that they were interested in. Thank you. We are very happy to answer any further questions.

CHAIR—Thank you, Mr Metcalfe. It seems to me to have been a very complex regulation to look at, and I would say that my colleagues feel exactly the same. Thank you for that information on the detainees. Certainly, according to Mr Baird, who was a member of this committee and is a member of the Human Rights Subcommittee, there was a difference in those figures. I would like to clarify a couple of things to start with. In the case of anyone who applied as a primary applicant before July 1997, does no fee apply?

Mr Illingworth—If they applied for a review before that date, no fee applies.

CHAIR—In reference to page 4 of the new draft that you sent to us, can you expand on what you mean by a 'streamlined' manner for processing?

Mr Illingworth—Which paragraph?

CHAIR—We are looking at paragraphs 2.1.6. It begins:

> Each primary application lodged on or after 1 July 1997:

Then it gives some dot points. The second dot point reads:

> • was liable to be processed in the 'streamlined' manner ...

What does that actually mean?

Ms Bedlington—There were a couple of things in particular that we did at that time. One was to give priority in processing to applicants from low refugee producing countries. We gave priority to the ones we thought would probably not be bona fide asylum applicants so that it minimised the amount of time they were in the country.

CHAIR—So it was a way of culling?

Ms Bedlington—No, just doing them more quickly so that the benefit they got from remaining in Australia awaiting their application to be resolved was removed as far as possible. The other thing—and it was not unrelated to the first one—was looking at the need for interview. We cut down very substantially the interviewing required for those particular applicants where they were making minimal claims. They came from a country where they were most unlikely to be a refugee. That made the decision faster.

Mr RIPOLL—I want to know where we have come from since the last meeting we had where we were discussing the graphs and the headings on the graphs. You say that is now fixed in terms of what you have given us in your new submission, so they are now the accurate graphs that represent the difference between the detainees and non-detainees; is that what you are saying?

Ms Bedlington—We have provided in the supplementary submission the information for all types of applicants—so community based and detainees—and separately we have provided the analysis for detainees only. So in the initial submission we had community based only and in the supplementary submission we have detainees and the total.

Mr RIPOLL—So we now have the total, the non-detainees and the detainees. I would look at the graphs more closely, but mine are just a little difficult to read. You can understand why I am not giving you specific questions on the graphs.

Mr Metcalfe—I can assure you that it was provided to the committee.

Mr RIPOLL—I am sure they were. I have not had an opportunity to inspect them more closely. I will have a look at the graphs and see where the trends are. Have you any further

information in terms of your statistics on how post-application the fee has reduced abuse? I am just trying to pinpoint the specifics because we are not really sure what the level of abuse might have been. You said that a range of factors affect people's decision to apply for appeals. I am aware that there could be a whole range of factors that could make appeals either go up or down. I do not know that there are direct links to the $1,000 fee. The question in my mind is: where is there a direct link, and is this beneficial to anybody, apart from just collecting revenue for the government?

CHAIR—Before you answer that, Mr Metcalfe, has there been sufficient time to look at those trends? There is some suggestion that maybe the time frame has not been long enough to get a very clear picture of those trends. Could you include that with what Mr Ripoll has asked you?

Mr Metcalfe—I will make a general observation and then Ms Bedlington or Mr Illingworth may provide a bit more detail on those two questions. In my opening remarks I indicated that our analysis when the fee was initially introduced was that for the low refugee producing nationalities there was a substantial decline. Since that time we have seen a gradual increase, but it has remained well below the levels of appeal for the high refugee producing countries. Our contention is that, were the fee not in place, we would probably see the flowthrough and the appeal rate for the low refugee producing countries at a much higher level than it has been. The fee has had the effect of suppressing what would otherwise be a higher demand.

It is important to go back to first principles and the issue that motivated the government and indeed the opposition in considering this issue back in 1997. It was the very substantial increase in protection visa applicants in Australia, both at primary and at review, and the notoriety that was starting to be established in relation to the protection visa process as a means of simply securing further stay in Australia. Of course, there were some unscrupulous entrepreneurs who were essentially touting the protection of the visa process as a means to obtain work rights in Australia.

I was quite closely involved in the issue when the regulations were conceived. There was certainly a lot of information that some agents and others were simply advising clients: 'If you want to stay in Australia, there is a thing called the $30 work visa.' The $30 work visa was a protection visa application. I am sure some applicants actually knew what they were applying for, but I am sure quite a few did not know what they were applying for. Hence the package that we refer to and which was part of the legislative arrangements back in 1997, which the fee is only one part, was designed to try to deal with that in a way that was going to impact on those people who were not genuine refugees but not impact on the genuine refugees—hence the introduction of the time limit for work rights—essentially, only if a person entered Australia and applied for a visa within the first 45 days would they obtain work rights; if they applied subsequently, they would not. That was to respond to the phenomenon we were seeing of people coming on tourist visas, a six-month stay usually, and applying on the last day or in the last week for a protection visa. So they had been in Australia for some reasonable period of time and that then obtained work rights for them.

The reason 45 days was chosen was it was believed that, if a person was really a refugee, the person would come forward with their claims pretty quickly. If they managed to get out and come to Australia, then usually it takes a couple of weeks to settle down and get organised. But

45 days seemed reasonable. I think 45 days was a period arrived at after discussions between the government and the opposition as to what was a realistic time frame.

Streamlining is referred to in the supplementary submission. You asked a question about this earlier. How can we send a message that the protection visa system is about protecting refugees and is not about simply allowing lengthy delays to allow people access to the Australian work force and potentially take jobs from Australians? The way to achieve that was to focus on those countries where traditionally there are very low rates of refugee applicants. The Philippines and other countries like that were quite notorious. People were applying in large numbers and virtually none—there were rare exceptions—were refugees. So if we focus quickly on dealing with those applications—getting them through, getting them decided quickly—then the incentive to apply for refugee status to get work rights was being removed.

This element of the package focused as well on the review side post application to bring in some disincentive for people who were refused but was not intended to be a disincentive for people who were going to be approved. We have a strong view that there are a whole range of arrangements in terms of immigration laws that Australia has established to try to send the message that we welcome genuine visitors, genuine students, genuine tourists and genuine migrants. We resettle very large numbers of refugees but we are also operating in an environment where there is a very healthy demand around the world for legal immigration, and more and more we are seeing people smugglers acting in an entrepreneurial way to find people to market particular countries to them. They watch developments here with interest. Essentially, any dismantling of packages of measures is used by people smugglers to say, 'Australia is easing off in relation to these particular things so it is an attractive place to go.'

So we have been very mindful in developing all of these measures—not only in relation to people applying from the community but in relation to people who may have arrived without a visa and who are in detention or whatever—about that crucial balance of ensuring that genuine refugees are recognised as quickly as possible and are given protection while at the same time sending the message to people who are using the system to rip it off that we are not going to encourage it. I have said a bit more than I intended, but I thought it was useful to provide some broad context there. Bob might be able to deal with the specifics of the question. There is a particular graph that may assist you in that.

Mr Illingworth—As the deputy secretary has just mentioned, it is very hard to tease out absolutely certainly what is and what is not having an impact. It is clear that, at the time the package was introduced, there were some quite startling changes in the behaviour of people who were at the point of making a decision about whether or not they will go to review.

The smoking gun is pointing us very clearly at this package having a significant effect. There were two tables that, in my mind, seemed to make that clear. The table on page 8 essentially looks at the behaviour of people from the low refugee producing nationalities compared to everybody else who is applying for review. It seems that there is a gentle increase in the rate of take up of review opportunities. This is probably to be expected seven years or so after the RRT has been in place with people with community networks becoming more and more aware of what it all means and more comfortable with going to a review.

Within that, looking at the difference in behaviour, in the year preceding the introduction of the package, there was a substantial increase in the take up rate by people who were from low refugee producing countries. It jumped from 75 per cent of them flowing on to over 82 per cent in one year. If that trend were to continue, you would see that the low refugee producing countries would be flowing on at a rate greater than everybody else within a space of a year. That suddenly stopped. Since then, it has been running roughly parallel to the average of everybody else allowing for the last year where data is always going to be unreliable.

In my mind, that seems to show an arresting of what was emerging as a trend of massive increase of take-up by low refugee producing countries. Since that time, everybody else has been flowing on to the Refugee Review Tribunal at a consistently higher rate than the low refugee producing countries.

Mr Metcalfe—To respond to the chair's question of whether it is too early, we have a couple of years of a trend line.

Mr Illingworth—We have got two and a half, maybe three.

Mr Metcalfe—In five years time, we will all have a better idea. Certainly, the signs at this stage appear to be positive in terms of the fee having had an impact and having an ongoing impact. But more data down the track will always support and give us better information on that issue.

CHAIR—It is little bit concerning when you look at the low refugee producing countries and that is on the incline. You just wonder about the fee being a disincentive, if that is climbing. Any comment?

Mr Illingworth—I do not think the fee was ever considered to be the silver bullet that would just address the issue. Certainly the fee does not even come close to cost recovery of the RRT decision. It is going to be a factor that will weigh in the mind of people who, when they are looking at the review decision choice, are basically thinking in terms of dollars. They are thinking in terms of how long they can stay, how much can they earn, how much they have to spend in order to buy that opportunity and how much will be at risk in terms of dollars if they went down that path.

Mr Metcalfe—And, indeed, if they had a debt due to the Commonwealth which may not be paid, will they ever want to come back to Australia and will that debt be a factor in whether they will be allowed to come back to Australia? That is a potential consideration.

Mr Illingworth—That is right. Some people will make that choice one way and others will make another. The statistics are showing that a percentage of those people, when they make that financial decision, have been making the decision not to go to review as a result of the fee.

Mrs IRWIN—Have you got the figures on how many people who have actually paid the $1,000 fee are back overseas and have applied to come back to Australia? What is their success rate, whether it be migration or a visitors visa?

Ms Bedlington—We have got the figures for the people who have repaid. I am pretty sure that we have not got with us the number of people who have had a debt who have repaid or made satisfactory arrangements who have subsequently been approved for a visa. We will take that on notice.

CHAIR—Your own submission says there were 64 or 68 fees paid at overseas posts.

Ms Bedlington—Yes.

CHAIR—So they are obviously people who have gone back, had a think and repaid when they were overseas.

Mr Metcalfe—I suspect—and we will need to check this—that there would be a fairly high success rate for those 68, in that they would probably only pay the fee if they knew they had a strong chance of actually receiving a visa. They would probably not bother if they were going to become a rejection case. Whether it was the last fact remaining, 'You will get a visa if you pay back the fee,' we can take on notice, do some work on it and come back to you.

Mrs IRWIN—I would appreciate that. Ms Bedlington, I was not at the public hearing on 22 March in Sydney and I noticed in the *Hansard* the chair asked:

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.

Further down you answer:

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.

To recover that debt how much does it cost the department? Let us just look at 1999-2000, you are stating in that year $832,699 was recovered. What is the cost to the department to recover the post decision fee?

Ms Bedlington—I do not think we are going to be able to identify separately all of the costs. I can make some general points that I think might help us understand what is going on. We notify the debt. That is an administrative process of sending out a formal letter that sets out the debt and that they are liable to pay that debt to the Commonwealth. If they leave Australia, go back to their country of origin and do not reapply then, except in very rare cases—and I look to my colleague to confirm this; I do not know of any case where we have—we would not take debt collection action offshore. So there will be none or very minimal cost in relation to that. In a sense, the need to repay the debt or make satisfactory arrangements before they could be granted another visa is actually what prompts the applicant to repay the money.

Mrs IRWIN—I am asking on behalf of the taxpayers of Australia. The *Hansard* says that $832,699 was collected in 1999-2000. I feel that we should be able to get the figure of how much it is costing the taxpayers of Australia to recover this. Is it $1 million, $2 or $3 million? Are we making a profit here?

Mr Illingworth—We can obtain some figures for the committee. One of the difficulties with providing precise data is that we do not have separate systems within the department to collect these debts. Essentially, we, on behalf of the RRT, collect the fee which involves sending out a standard letter and our normal departmental systems, which are used for collection of other debts, are used for that purpose.

On the one hand, it makes it more difficult to carve off a particular set of costs and say, 'There are the costs for collecting the fee'. What it does mean, though, is that there is no economy of scale problem or no infrastructure problem in terms of additional costs here. It is really just the additional marginal cost of sending out a standard letter and putting a listing on MAL. We could do it notionally by finding the costs of that additional work and provide you with an estimate of the cost of conducting that work for each person who owes the fee.

Mr Metcalfe—I think we should be able to give you some more details, so we will take that on notice.

Mrs IRWIN—That would be appreciated, thank you.

Ms Bedlington—We would apply the normal cost effectiveness principles to any debt collection. If it is going to cost more than the debt to recover it, then it is not worth putting that investment in, remembering that, if they want to come back, we do not need to do any more. They will, of their own volition, pay the fees.

CHAIR—In your submission, you talk about over 3,000 outstanding debts, but those people are still triggered on the MAL. The debt still remains, even though you might write them off?

Ms Bedlington—That is right.

CHAIR—So you have written them off, but the debt remains and the persons remain on the MAL?

Ms Bedlington—Yes.

CHAIR—I know Mr Ripoll raised last time the fact that the $1,000 was just being used as a trigger for MAL. Even though you are writing off some of these debts, it still remains?

Mr Metcalfe—In accounting terms, I think there is a write-off, but the fact that the person owes the Commonwealth $1,000 is recorded on the movement alert list, so if they apply for a visa in the future the issue of that debt will then be dealt with. We will do some further work on this, but from the figure we have before us—65 or 68—I suspect that those people have applied for a visa. And I suspect—but we will check—the payment of the fee may well have been virtually the last aspect before them being granted a visa. Whether that was a visitor visa, or whether it was a spouse visa, or whatever, I suspect that essentially they would have met all other criteria and then repaid the debt and then moved on. Or, indeed, if a person is being sponsored back here, it may well be that the family pays the fee to clear away that particular issue for them. But there is some more work we will do on that.

Ms Bedlington—The write-off is in relation to taking further recovery action and as an accounting mechanism that is standard across the Public Service and not just for this particular issue. Madam Chair, you are right: the indebtedness on the part of the individual remains and the trigger on MAL still remains.

Senator TIERNEY—What does mala fide mean?

Mr Metcalfe—Bad intentions.

Senator TIERNEY—It is bad intentions.

Mr Metcalfe—Bona fide means good intentions, mala fide means bad intentions.

Senator TIERNEY—I was not too sure of its exact meaning.

Mr Metcalfe—In the vernacular, a lot people talk about economic refugees, or whatever. We do not tend to use terms like that. There are refugees; there is an obligation by countries to protect these people. And there are people who use the process, because the process is an end in itself. The process gives a stay entitlement while that process is worked through. If there are people who are saying, 'Look, I am going to use this process not because I am really fearing going home, but because I want to stay in Australia for as long as I can for economic, or for other reasons', we call them mala fide applicants.

Senator TIERNEY—Would you have a rough estimate of how many succeed? How long do those people tend to stay on average; they are not really serious, but are just here?

Mr Metcalfe—Probably the way for us to deal with your question is to get our analysis of the low refugee producing nationalities, essentially those nationalities where experience shows that there are few refugees. As we have described earlier, we have put procedures in place to try and move those through fairly quickly.

Senator TIERNEY—Just take it on notice.

Mr Metcalfe—Again, we will take that on notice and come back to you.

Senator TIERNEY—Your submission shows that more than half of the 1996-97 unsuccessful Refugee Review Tribunal applicants are still in Australia: how are they still able to remain after they have been rejected by the refugee tribunal? How long on average do they stay after that point?

Mr Metcalfe—We will need to take that on notice and come back to you. I think this committee is aware, through another inquiry, that various judicial review opportunities exist. If a person is rejected by the Refugee Review Tribunal, it is open to them to bring an application to the Federal Court, challenging the lawfulness of that decision. If a person is particularly persistent or aggrieved and if they lose in the Federal Court, they can appeal to the full Federal Court and ultimately the High Court, and we see that happening. The Refugee Review Tribunal jurisdiction in the Federal Court numbers hundreds of cases—400 or 500 cases—as well as

many in the High Court. In another inquiry, this committee has been provided with information about a phenomenon that has occurred over the last two or three years whereby class actions have been increasingly used by applicants, some of whom are post RRT and some of whom are other persons. That has enabled a fairly low cost method of accessing the court and being able to stay in Australia for fairly lengthy periods.

There is also the potential for persons to apply for other types of visas—for example, a spouse visa. Again, we deal with those as quickly as we can. It is also possible for a person, post RRT, to seek the minister's intervention. That is a process which, to the extent we can, we move along quickly. There is provision under the legislation for a person who has been refused at the RRT to, pursuant to section 417 of the Migration Act, seek the minister to consider their particular circumstances.

There is the potential for some people to go bush. We simply lose contact with them. They move into the community, become unlawful and are amongst the people who we locate from time to time, pursuant to compliance action. One of the issues that we have looked at in great detail is how we can secure compliance with decisions of the department or the RRT—or, indeed, the court—for people in the community. While there is an incentive for people to remain in touch with us while the process is under way, once they know that they are refused and they may have run out of other options, the incentive for them to remain in touch is much less if they are determined upon a course action that is to remain in Australia at all costs. It can be particularly resource intensive for us to try and locate people in that circumstance if they are intent on not staying in contact.

To be absolutely complete in terms of other ways of people staying in Australia, I will mention that there are various complaint mechanisms under UN treaty bodies such as the committee against torture, the International Covenant on Civil and Political Rights or the Human Rights Committee of the United Nations. We are seeing some persons—not huge numbers—pursuing international complaint mechanisms, essentially arguing that Australia's processes have failed them and that they therefore need to have some sort of UN finding, even though it is not determinative and the Australian government is not bound by it. So a particularly determined applicant could access that process as well. The Australian government has said that it will not necessarily be bound by any such findings and may take action to remove people notwithstanding the existence of those particular matters, but it is a further process that is available to determined applicants.

Senator TIERNEY—Do you have an estimate of the percentage of those who fail the Refugee Review Tribunal stage who go bush, who try and disappear?

Mr Metcalfe—We would have that data, so I will take that on notice and we will provide that to you.

Senator TIERNEY—At the other end of the spectrum, what percentage make it to the High Court?

Mr Metcalfe—We can provide that information.

Senator TIERNEY—I will turn to the migration agents. MARA claim that the complaints mechanism is robust and accountable. What is your view on that? It relates more broadly to the issue of self-regulation. They do have a complaints mechanism; they claim that is robust and accountable. I just wanted your view on it.

Mr Metcalfe—It is not something I have specifically prepared myself on for this particular hearing, Senator. The Migration Institute of Australia are, of course, here today, but the department has provided a fair bit of information to other inquiries and to Senate estimates on the issue of our views. So, with your indulgence, I might take that question on notice as well and provide you with what information we can.

Senator TIERNEY—Okay, thank you.

CHAIR—One of your tables says that there were 179 ministerial interventions in 1999/2000, which seems high. Do those 179 interventions include family groups or are they all individuals? Could they include groups so that the number people affected could be even higher? In addition, could you throw some light on why the minister intervened. Who determines whether the minister will intervene? Does an officer of your department decide that cases should go to the minister? Finally, why haven't those cases for which the minister is intervening gone through the RRT?

Mr Metcalfe—Ms Bedlington will provide some detail but, again, we have provided a substantial amount of information on this issue to the Senate estimates committee in recent hearings so we will be able to provide that to this committee.

One of the major reasons why the minister intervenes is that for a person who has gone through the RRT process—and the intervention ability only arises post-RRT, or post-MRT in the case of non-refugee applications—there are often other factors present that are not refugee related matters but are compelling matters in the national interest. For example, the vast majority of interventions occur on the grounds that the person has now married an Australian citizen and there are some particular factors that are relevant. Ms Bedlington can perhaps describe the process to you, the way the guidelines operate and the involvement of the department and the minister in some of those issues.

Ms Bedlington—The minister has provided us with guidelines which identify the sorts of cases that he wants to have referred to him. They cover such issues as links to an Australian citizen—for example, where they have married an Australian—but it also covers cases that may trigger Australia's obligations under other human rights instruments like the Convention Against Torture or the ICCPR—the International Covenant on Civil and Political Rights. The guidelines are publicly available, and both migration agents and individual applicants have access to them. We can provide the committee with a copy of them, if that would be helpful.

CHAIR—Yes.

Ms Bedlington—The minister's intervention powers are discretionary and non-compellable so, if the minister chooses to intervene, he has to determine whether or not replacing the tribunal decision with a more favourable decision to the applicant is in the public interest. His

accountability in relation to exercising that power is secured through the tabling of a statement in parliament.

CHAIR—Thank you.

Mr RIPOLL—Mr Metcalfe, I am just going through the graph in some of your latest evidence. I have got a number of questions which sum up where we are at. I think we are getting to the point where we need to make a decision in our own minds about where we stand on this.

Specifically, you refer to graph 3.2.1 and you say that there is a definite indicator there about the effectiveness of the $1,000 fee, although you do say in the evidence, 'in combination with other measures' and I accept that—I do not have a problem with that. What I do have a problem with is how, specifically, we tie in the $1,000.

There are a number of contradictory things that have occurred during the inquiries of this committee. One, there is an agreement—I think from everybody—that the post-decision fee has not been a deterrent at all to anyone applying. So, it has not been negative in that effect and everyone agrees—I can see people shaking their heads.

Mr Metcalfe—I think our view, Mr Ripoll, is that it has not been a deterrent to a genuine applicant. It has not been a deterrent to a refugee, but we believe it has suppressed applicants from mala fide applicants.

Mr RIPOLL—We took evidence at the last public hearing that we had, not only from you but also from other organisations involved with refugees. I asked them the specific question, 'Do you know of any cases at all that you have dealt with where somebody has come to you and not applied because of the $1,000 fee?' They hung their heads a bit and said, 'No.' So it has not deterred anyone from applying.

It was very important to our deliberations, and also to your evidence, that this has had no negative effect on people applying for review. I accept that; I do not challenge that at all. I just find it interesting when we have further evidence that says, 'There are statistics and evidence that show that, if this fee were not in place, the current application rates would be much higher.' But we have no evidence of that, and you are quite specific. We cannot quantify it; we just know. That is okay, and I accept that to some degree as well.

But you say not only that, had the fee not been in place, the application rate would have been higher but also that this has had a depressing effect. You confirmed this a moment ago, when you said that it has reduced the possible number of applications. Specifically, you go on to say that there are economic reasons why detainees may want to stay on longer, and this is tied in to why people would want to risk $1,000 and possibly lose their money.

Another question I have concerns non-detainees. From all the evidence we have heard, I cannot see any reason why anybody would not go through the process, even with the $1,000 fee, whether they are a non-detainee—if that extends their stay or not—or a detainee. What difference would it make when they are in detention? They are not enjoying themselves; they are not on a holiday.

Further evidence you give is that non-detainees want to extend their stay for economic reasons. The economic reasons you give are employment and financial incentives. Again, I cannot see how many people this would represent. It certainly might be the case with one or two people, but how many people would say that there is an economic reason to stay behind. Have they got a high paying job? I just cannot see 80 per cent, 50 per cent or any percentage of refugees here, who are going through this process and having difficulties with a whole range of things, being in such a highly paid job—you would not know where they were, you could not locate them—if they were not bona fide to start with.

What all of these little bits say to me is that, while that $1,000 is part of a package—and you can explain it any way you like—none of the statistics or graphs point to it being a significant part of why anybody would not apply and therefore not abuse the system. That is the question it comes back to. The idea of this post application fee is so as to reduce abuse, and nowhere can it be shown that abuse has been reduced. Numbers might be up or down, things might have changed and graphs might show different things, but nowhere does it show abuse. Therefore, you could always argue in the absence of real facts that, as part of a package, this had an effect. But you could argue just as strongly that it has no effect and there is no evidence either way.

Mr Metcalfe—Thank you, Mr Ripoll; that was an interesting analysis. I think there is some more work that we need to do because our conclusions are somewhat different to that. I agree, as I said in my opening statement this morning, that there is no evidence that we have been able to find—and indeed no evidence that has come to the committee in oral evidence or submissions—that a genuine applicant has been dissuaded from making an application because of the fee. That is the first important point.

Bearing in mind the public interest that we are seeking to achieve here, we want to ensure that genuine refugees are recognised by the system and that there are no disincentives for them. Regarding people who are using the process as an end in itself, we want to come up with a package of measures that will reduce the numbers of people using the system who are not refugees. It would be helpful to work through the logic in the way that you have—you have taken an important series of steps.

On that first point, it is interesting to have a look at evidence given to the committee on 22 March, when the ICJ was before the committee. At *Hansard*, page M38, when Senator McKiernan asked, 'Was there any genuine applicant who had not applied because, if unsuccessful, they would be liable?' Ms Biok replied:

> 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 then said:

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

Mr Bitel then said:

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.'

So I agree with you in relation to your first contention absolutely. There appears to be no evidence of this system working improperly. Now the question you are correctly posing is: is it a disincentive for anyone? Are the non-genuine applicants being deterred from applying or are they simply applying anyway because the fee is never going to be collected.

I would like to take you back to my opening comments and the graph. The statistics appear to show that at the time of the introduction of the fee there was a substantial drop in the number of persons from low refugee producing countries going on to the RRT. It appeared to be—I think I am correct in saying this—about a 30 per cent decline in applications. I also agree that since that time that figure has been increasing, but it has not got up as high as the flow-on rate for people from high refugee producing countries. So the contention I have been arguing is that it has had a suppressing effect. It has not in absolute terms led to a reduction, but we believe there is sufficient evidence to show that there are fewer applying because of the fee than if the fee did not exist.

Mr RIPOLL—Mr Metcalfe, can I draw you to that point. I think we are getting closer to coming to some finalisation on this. If what you say is correct—that this has had no effect on genuine applicants—first, I ask you: how would you determine what a genuine applicant is just as a matter of course prior to anyone going? How would you determine that factor? But if you what you say is true and your fee works, then all those now applying are genuine. You say there are no cases of abuse and this has had an incentive and has suppressed the non-genuine so therefore we are getting to the point where all those applying are genuine.

If all those applying are not genuine, then we still have the case of non-genuine applications. So the fee is still not the disincentive. Where would you split that figure? Your figure is still a rising figure—the trend is still going up; it is not going down. Again, you start drawing in your mind: if what you say is true—this has had a suppression factor and is working—then we should really get to the situation where no-one who is non-genuine applies. But, if non-genuine people are still applying, then what have we achieved? We have not achieved a reduction in abuse—and obviously in any system there is always going to be some abuse—then really what we are doing is just separating those who can afford the $1,000 and those who cannot. Or are all those who apply, in their own minds, genuine?

Mr Metcalfe—I think I started off the day by saying this is a complex area, and I completely agree. We have attempted to divide up a cohort of people that would be largely genuinely motivated—as opposed to a group of people who are largely motivated for economic or non-genuine reasons—by drawing a distinction between high refugee producing countries and low refugee producing countries. Because of human right abuses in some countries, there is a very high chance that a person from that country is a refugee. The particular difficulty that the committee has got and we have got in dealing with this issue is that all of these statistics are made up of a whole lot of individuals and the factors that are driving particular individuals may vary greatly. Even in the low refugee producing countries there may be the occasional individual who is in fact a genuine refugee, so that makes our task even more complex in trying to come to the conclusions that we are looking at.

A low refugee producing country is defined by us as a country where less than two per cent of applicants are granted refugee status in Australia. Essentially, it is the rare exception of the person who actually is a refugee. In approaching it in this way we have done some tracking of the application rates and the RRT rates for those particular countries. The point you are trying to drive at is: if this fee worked perfectly, we would see 100 per cent of applicants from high refugee producing countries going to the RRT and zero from low refugee producing countries not going to the RRT. Again it is not that simple. Even from high refugee producing countries there are some people who are not refugees. Many of the refugees will have been detected at the primary decision stage. The people who are in fact going through to review are the people who have not been able to satisfy a departmental officer that they are refugees. There must be some element of doubt as to whether that person is a refugee or not. With the low refugee producing countries, because the people have not been found by the department to be a refugee it does not mean that the person may not be seen by the RRT to be a refugee. All of that makes our task more difficult because the groups of people are not homogenous in that sense. Even if a person from a low refugee producing country does pursue review and is not a refugee, it does not necessarily mean that they are not bona fide. They may genuinely believe themselves that there is an issue, but an application of an objective set of measurements may show that they are not refugees. Having labelled that context, which does not assist the committee in terms of reaching easy decisions, it emphasises the complexity of the particular issue we are trying to drive at. Then you add the further complexity of the range of factors that a person may take into account as to whether to proceed to review or not, and we have been very clear that the $1,000 fee is not a silver bullet; it is not a simple panacea; it was never intended and seen as the one answer that was going to fix this particular issue but rather was seen to be a sensible and proportionate response to an issue—with the expectation that it would assist; it would not fix it up forever but it would assist.

That is where I would like to go back to where we started, which is the graph 3.2.1 in our supplementary submission where we do appear to be seeing a lower flow-through rate for people from low refugee producing nationalities after there having been a significant early decline. So there was an impact back in 1997 and it has stayed lower even though it is increasing. Our contention is that there is a reasonable conclusion to draw that if we did not have the fee we would see a higher rate. If we took the fee away we would see a higher rate. I also go back to the other broad observation I made earlier that any decision by a government to what might be seen by people smugglers as weakening our approach to these issues would send a negative signal internationally. This is seen as part of measures designed to enhance the integrity of our system, to protect the genuine and act as a disincentive against the people who are abusing the system. In addition to the actual impact of the fee, which you very properly have been pursuing, there is also the apparent and observable impact of the fee as well as to what it actually means in terms of a broader set of views about our arrangements.

Mr RIPOLL—To finish that off, on the issue of people smugglers, you throw that in and I question that theory. I question the theory of a people smuggler saying, 'Gee, the Australian government has taken away the $1,000 fee. I am just not going to worry about making those millions of dollars that we make any more' or what the decision process of a people smuggler are. I do not think they would care what our rules were. People smugglers are out there to make money off people and are not looking for a way out.

Mr Metcalfe—But what they do is trade on false information. They try and portray domestic developments as being noteworthy or not. For example, boats were arriving two years ago directly from China with non-refugees. These young men from Fujian Province, traditionally the illegal immigration capital of the world, paid $35,000 for the privilege. They were told that they could come to Australia and get work because of the Olympics and that Australia would be a republic by 2001 and that there would be an amnesty for illegal immigrants. That was the line that was being spread.

In recent times, there has been considerable public debate in Australia as to whether women and children should be released from detention. The minister has made public comments about a trial that he is still working through with the community in Woomera in relation to the arrangements for that. Recent boat arrivals in Australia have told us that the people smugglers have been telling them that, if they come to Australia, the men will be detained but the women and children will not. It is absolutely proper and appropriate for there to be public debate on these issues in Australia. What I am just pointing out is that all of these messages are picked up and used to enhance the false messaging that occurs. While this particular issue is somewhat different from the aspect of the people smugglers who, last month, brought 757 illegal arrivals by boat in Australia, it is the general environment that I think the committee needs to be mindful of in its recommendations in this area.

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.

Mr Metcalfe—I think there were three or four issues that we took on notice. We will get that information back to you as soon as we can.

[11.38 a.m.]

BURHALA, Mr Florin, National Executive/Director, Migration Institute of Australia

YOUNG, Mr John Preston, Victorian President, Migration Institute of Australia

CHAIR—Welcome. 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 Young—No.

Mr Burhala—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. Mr Young, before we ask you some questions, do you wish to make an opening statement?

Mr Young—Yes, I do, Madam Chair.

CHAIR—Thank you.

Mr Young—I will give you some background on the institute. There are 12 members on the executive of the MIA. It is made up of presidents of each state of Australia and there are six other elected members on the national body, including the past president, Ray Brown. The MIA currently consists of over 700 members and our web site is mia.org.au. There are about 2,500 registered agents. There could be slightly more now Australia wide, so we do not represent the total migration agent list. The MIA is responsible for the MARA, as no doubt the committee is aware, and the submission put to the committee today is on behalf of the MIA and not the MARA. We thought we would make that clear to you.

I do not usually go over in great detail about our submission, but in our submission we have some concerns about the protection visa applicants in detention. They are unable to work. One could hardly argue that they seek to prolong their stay in Australia. On the contrary, most are genuine refugees, if they are obviously from Iraq or Afghanistan. In our written submission, the adverse psychological effect, because of the debt of $1,000, cannot be good for these applicants. We put that the protection visa applicants in detention from certain countries should be excluded from the post RRT fee.

Those arriving on a valid visa applying for protection visa applications within the 45 days can work and the $1,000 fee in our opinion would be of little consequence to this group. We have said in our submission that regulation 4.31B should be repealed as it is failing to prevent the abuse of the system. I have noticed DIMA's submission with some interest. I have noticed their graphs and their figures.

Alternatively, if it was not repealed, we thought it needed to be modified or more targeted. We are of the view that a higher penalty is needed on those who abuse the system. This can be identified by way of gazetting the low refugee producing countries, those who have no valid claims, who do not attend the RRT hearings or who are found to have no basis for submitting an application. We acknowledge that there has been some improvement. We have seen the graphs and we are aware of some improvement in terms of stopping the abuse but it probably does not go all the way. That is my opening statement, thank you.

Mr Burhala—I have no comment or opening statement.

CHAIR—I would first like to say that you propose to increase the fee to $5,000 as a way of identifying those people who may be abusing the system. You talk about low refugee producing countries. We heard from DIMA this morning that there will always be that person who may be very genuine in a low producing refugee country who could, in fact, be penalised from that fee.

Mr Young—Correct, but the DIMA submission, if I am not mistaken, says that there is a two per cent chance of success in the RRT.

CHAIR—But in that two per cent you are still talking about people.

Mr Burhala—Our submission is looking at an increased fee being applied to non-successful applicants, not to the successful applicants. If a successful applicant comes from a low producing refugee country, they would not face that fee. The gist of our submission is that, when this fee was introduced, it had a twofold purpose. The first was to try and reduce abuse and the second was to try and recover some costs.

I have noted from the department's submission this morning that they do not have the figures as to what the costs of recovering those fees are. However, given the number of applicants, we suppose—we do not know exactly—there would be quite a high cost in administering those debts. What we are saying is that a fee of $1,000 would not go a long way to recovering those costs. The second view is as a deterrent especially to people who are in the community. If a person is in the community and they wait for a year, a year and a half or two years, in some cases, for a Refugee Review Tribunal decision, during that time I assume they are on a minimal wage. I am not sure what that is but I am assuming it is $15,000. If they waited for a year, let us say, cost analysis, they would say 'I will pay $5,000 to make $10,000'.

Mr Young—One of the concerns I had, also leading on from what Florin said, was that there was an increase, again from the department's figures, in 1998-99 of 924 applications from the low refugee producing countries. Although the trend from the very early part of 1996-97 showed quite a large number, it does not seem to have been effective. It seems to have been increasing.

CHAIR—Notwithstanding those figures, we have heard this morning that people will still apply to the RRT firmly believing they are bona fide refugees. It is only through the RRT process and the criteria that have to be met that they are found not to be genuine refugees. They are not the sort of people who are abusing the system, but those people are going to be caught with your proposed $5,000 fee, which could bring enormous hardship on them.

Mr Young—Touching base on what Florin said in regard to the genuine refugees, we have to remember that the minister has powers under section 417. A lot of these people lodge applications believing that they are truly a refugee, or that they have some other claim in terms of a humanitarian response. We know that the minister has approved around 4,000 applicants over a period of time, not all in section 417—also in 315 or 351.

CHAIR—He gets around 4,000 applications a year.

Mr Young—Okay, applications. Again, he would approve X number of those.

CHAIR—There were 179 approvals last year.

Mr Young—They do not pay the fee, either.

CHAIR—No.

Mr RIPOLL—I am having a bit of trouble understanding why you would want to increase the fee from $1,000 to $5,000. Mr Burhala just made the comment that the $5,000 would only apply to non-successful applicants. That is currently the case with the $1,000 fee, so the only difference is the bigger fee. One of the things that we have been trying to determine in this inquiry—and one thing that has come out in all evidence we have heard—is that not being successful does not mean that those people are mala fide. Therefore, to punish them with a fee may be—and, in my view, could very strongly be—the wrong thing to do. A $1,000 fee is bad enough, but if it were $5,000—I do not understand your thinking behind that.

Mr Young—That is not what we are suggesting in the submission. We talked about $5,000 being imposed on those applicants who do not submit any valid claims to be refugees, who did not attend the RRT hearing or who are found by the tribunal to have no basis for sending in their application for review. That is where we were coming from.

Mr RIPOLL—Yes, but that is still the case now except for the one bit you have changed where those people do not attend. That is the only change from the current system. Is that right? Is that your understanding?

Mr Young—That would be accurate.

Mr RIPOLL—The fee would then be for non-attendance.

Mr Young—But, if you abolish the regulation—if you repeal it—how else do you stop the abuse of the system?

Mr RIPOLL—That is the questions at hand: how do you stop the abuse of the system?

Mr Young—Well, that was one thought.

Mr RIPOLL—DIMA is saying to us that there is always going to be some abuse, because there are always going to be some people who can afford it. We are not so interested in that

aspect. I am more interested in the impact on general bona fide applicants who apply through a system that is currently available to them, go through the process and find that they are unsuccessful. There are not too many ways to test it but to go through the system. Currently, if you are unsuccessful, the cost of testing it is $1,000, which is bad enough, but $5,000 for unsuccessfully testing it is excessive. You may still believe that you are genuine. There might be some other mechanism for non-attendance, but to apply a fee of $5,000 for, in effect, non-attendance, seems a bit harsh.

I am looking for the parts in your submission explaining why $5,000 would be a better deterrent from that currently in place and how that would work. If you are going to make it $5,000, for the sake of argument, why not make it $50,000? It would be very effective at $50,000, but it would not weed out abuse from non-abuse. If I were genuine, I would not even test the water, no matter how genuine I thought I was, because of the unlikely event that I did not get it up because no-one understood my point and I was left with this massive bill to the Commonwealth. Fifty thousand dollars is a lot of money; so is $5,000, and so is $1,000. How does increasing the figure help in distinguishing between bona fide and mala fide claimants?

Mr Young—But there is a lot in what we say, because the figure is that only two per cent have been approved. If you look at the 924 in that one year, the increase is two per cent of those people—18 applicants.

CHAIR—But that is only two per cent from the low refugee producing countries.

Mr Young—That is where, traditionally, this seems to be coming from, in terms of not attending the hearing, not providing submissions, not putting forward their claims in a proper manner. They would most certainly be from those low refugee producing countries.

Mr Burhala—The general thrust of our submission is mainly that the regulation as it is at present is not adequate in the sense that it does not achieve any of those two goals for which it was introduced. In the main body of our submission, we look at other ways of trying to improve the system, trying to have the system working. However, what we are saying is that, if those proposals are not taken up, alternatively, if the committee suggests that the regulation proceeds as it is, then an increase in that fee would certainly have a bigger economic impact on people who are using the system for that benefit only.

There is no doubt that people who are illegal arrivals at the airport or boat arrivals are not using the system to extend their stay. As some members of the committee have noted, it is not a holiday; they are staying in a detention centre. They are lodging those applications certainly with a view that they do have a case, whether they are right or wrong, obviously that is to be determined later on through the process. However, in their minds, they believe they have a case. We see that imposing $1,000 post-decision fee or $5,000 post-decision fee on this group of people would not have such an impact. None of them would pay that fee. It would add to their stress because here they would be waiting for an RRT decision and they would receive a letter, which said that, if they fail, they would owe the government of Australia some money. Most of them would not be able to pay that money. What we are saying in our submission is that most of those people who have arrived here in this way are here because they probably would not have qualified for any other visa.

The fact that, by way of accounting, the debt is written off but their name is still sitting in mail list is not going to have much of a deterrent effect anyway. They arrived here this way in the first place because either they were running from a risk or they knew that they could not qualify for any other type of visa, so they would be unlikely to apply in the future for another visa.

Mr RIPOLL—I must have missed the point somewhere. I am not too sure what you are saying specifically. It seems to be contradictory to me in terms of what you are putting forward as fact and what you are putting forward as reasons and why you would determine that $5,000 would somehow fix that. A key factor has come forward in our deliberations, in our public hearings and evidence, and this has been very important in my thinking. It has come not only from many organisations, but also from DIMA. That factor is that the $1,000 in itself has not been a deterrent to genuine applicants to apply. Therefore, they are willing to risk $1,000 in the belief that they are genuine and they will take their chance to go through the system. That seems, in effect, a fair thing. I do not know that that would be the same case if it were $5,000. The key here is that we do not contravene any international conventions that we are obliged to by giving people a fair access. I think a $5,000 fee would deter genuine applicants from applying in the risk that they would lose their money.

Mr Young—It is certainly a very difficult area and a difficult task that you have. To answer your question, Mr Ripoll, the institute looked at it from the point of view that, if it was going to be repealed, what else do you do? There are certain countries that could well be gazetted in terms of low producing countries. There may be a very small number of people from those countries who would be regarded as genuine, but there is such a large number who are applying from these low refugee countries such as you have probably seen from the report, from the Philippines and Fiji. If the fee was going to be removed altogether, what else do you do? It has had some effect, but it is not good enough, so what is the balance?

CHAIR—When you say it is not good enough, what are you referring to? I mean you are migration agents yourselves; you are working in this area daily. Are you representing many detainees?

Mr Young—Yes, in our own capacity we are.

Mr Burhala—Not in the capacity of the Migration Institute but yes—

CHAIR—Would they be the bulk of your work?

Mr Burhala—Yes, they would.

CHAIR—Someone put to us the other day that we should open up the work visa, allowing people to work, but the detainees of course do not have that right. They cannot do that. You are really speaking from two sides: you are both migration agents as well as representing MIA?

Mr Burhala—Yes.

Mr Young—What we say as the MIA is that there has been abuse in terms of lodging applications from low refugee countries such as Fiji and that is where we think the problem probably lies in terms of genuine refugees.

CHAIR—Would your agents, if they were approached by someone from Fiji, be responsible as far as—?

Mr Young—We would, as practitioners, and we would certainly like to think that none of the members of the institute would lodge vexatious or unfounded applications for refugee status.

Mr Burhala—There is a code of conduct. If they abide by that code of conduct, really they should not be advising clients to apply for—as the department has called it—the $30 work visa. They would probably be in breach of the code of conduct and if the matter were reported to the Migration Agents Registration Authority it would obviously be investigated and appropriate action taken.

We have had information that there are cases. I have noted that the Principal Member of the RRT in a recent submission to a parliamentary committee—unfortunately I cannot remember which one it was; it could have been the Senate estimates but I am not sure—has indicated that there are large numbers of applications lodged from countries such as Malaysia, the Philippines and so on. The applications are lodged with the tribunal and the applicants and/or their representatives do not turn up at the hearing. It is clearly just a way of prolonging their stay.

What we are saying in our submission is that cases like that, especially if there is a representative involved, should certainly be referred to the Migration Agents Registration Authority for appropriate action. So I think mainly the $5,000 fee should be imposed, as the submission says, on applications which are clearly lodged on that basis.

Senator TIERNEY—The Refugee Review Tribunal is now setting aside a lower proportion of appeals against DIMA decisions than previously. In fact, the RRT is agreeing the initial DIMA decision more often. If you have a look at the figures, particularly for 1995-96, when there was no fee, compared with, say, 1998-99 where there was a fee—this is a table at page 43.

Mr Burhala—We do not have that.

Senator TIERNEY—They are the figures. Eighty-two per cent back when there was no fee; 91 per cent in 1998-99 when there was a fee. How does that indicate that the regulation is failing to weed out spurious applications as you conclude on page 43?

Mr Burhala—We looked at the percentage of cases set aside by the RRT and that percentage has been dropping, which means that fewer people who apply for a protection visa are found to be genuine refugees. Therefore, there is the possibility that a larger number of mala fide cases are being lodged with the RRT.

Senator TIERNEY—But the number of cases has dropped too. The number of cases over those percentages that I gave you went from 596 down to 560, so it actually dropped.

Mr Burhala—But we are looking at a drop of 36 cases.

Senator TIERNEY—You are saying it was going up; I am just saying the figures indicate it has dropped.

Mr Burhala—The number of applications might have dropped, but on a percentage basis the number of actual approvals has also dropped. Although you might have had 596 cases in 1995, 82 per cent of applications were rejected by the RRT. So when we are talking percentages, we are talking absolute figures—

Senator TIERNEY—No, I am sorry; you are not talking absolutely when you are talking percentages.

Mr Burhala—Sorry. Basically, 82 applications were found not to have the grounds for a refugee—

Senator TIERNEY—Eighty-two per cent.

Mr Burhala—Yes, 82 per cent. Whereas in 1999-2000, 91 per cent were found to have no grounds for a protection visa. Therefore, the number of applications from people who do not have grounds has increased.

Senator TIERNEY—You are saying that the regulations are failing to weed out spurious applications.

Mr Burhala—Yes.

Senator TIERNEY—So how do those figures back that view?

Mr Young—In the DIMA submission they put forward, we were looking at low refugee producing nationalities, not the overall picture. According to what I have taken from their submission, it was below the 1996-97 figures but there were some 1,400 applications. The worry is that there has been a marked increase compared to 1998-99, an increase of 924.

Senator TIERNEY—Where are your figures from? I have not got these.

Mr Young—From the department of immigration.

Senator TIERNEY—But you are now taking a sector, aren't you?

Mr Young—They even acknowledged it at 4.4.25. You have got the overall figures. They say:

> The trend towards an increasing concentration of low success probability applications was reversed. Although in the subsequent years the proportion of RRT applicants from 'low refugee producing' nationalities has been increasing slightly, it has still not returned to the level attained before the fee was introduced.

Senator TIERNEY—I do not have that in front of me, I am sorry. We are looking at the overall figures. Surely that is the important thing—the overall figure.

Mr Young—It is not really, because we were looking at the low refugee producing countries where there were large numbers of applications being lodged.

CHAIR—So that is where you are targeting?

Mr Young—That is where we are targeting. We are saying the abuse is occurring in this area not in the genuine area and not on the overall figures. That is why I think all the committee would agree there has been a slight increase in the last few years, and it has not deterred those people from those countries from applying to the RRT.

Senator TIERNEY—Let us go back to your original statement at the start of today where you said that the regulation had failed to achieve its two main purposes. Part of what you were arguing—which I thought was a little curious—is that it is failing to recover some of the cost. I would have thought by definition if you are charging the $1,000 fee, you would actually be recovering some of the cost.

Mr Burhala—You might be recovering some of the costs, but you might not. If your costs of actually administering this fee of $1,000 are higher than what you are actually recovering, you are not recovering any costs because you have put in place a new process which costs more than the money you get out of that process, which means that that money has got to come out of somewhere else.

Senator TIERNEY—Do you have the hard figures on that?

Mr Burhala—No, we do not have hard figures.

Senator TIERNEY—What are you basing that on?

Mr Burhala—We are basing it on administering all the debts that one has to administer. If, say, you have 560 applications and only 10 per cent of those people pay their fees, 90 per cent of the applicants have incurred a debt to the Commonwealth government. That debt will have to be administered in some way.

Senator TIERNEY—So you pick up $56,000, you do not pick up the rest, and you are just assuming certain other costs beyond that point on recovering that money, but you do not have any hard evidence on that?

Mr Burhala—No, we clearly say we do not have any hard evidence and, as the department has stated, they themselves were unable to come up with a figure given the system involved. What we are saying is that if you proceed with the regulation you would need to look at whether administering those debts is a more expensive exercise than doing away with them altogether.

Senator TIERNEY—The purpose of it is not to generate, necessarily, a surplus of money; it is to do with influencing the behaviour of people in this area.

Mr Burhala—Yes.

Senator TIERNEY—Surely that is the central point.

Mr Burhala—Sure. That is one of the points stated.

Senator TIERNEY—On a separate matter, you have a continuing professional development program to promote a high standard of excellence in education and services in the migration industry. Could you, in a nutshell, tell us about that? How long do people spend on this program? Who teaches it? Is there any accreditation?

Mr Burhala—The question encroaches onto MARA duties. We are here representing the MIA.

Senator TIERNEY—Yes, but all MIA people undertake that program, I believe.

Mr Burhala—Yes, they do undertake that.

Senator TIERNEY—Can you tell us about it?

Mr Young—I think I can. In terms of Victoria, we hold workshops and seminars every month. The majority of the speakers are professionals who attend those seminars on a particular workshop.

Senator TIERNEY—So this is conference type training?

Mr Young—It is not a conference, it is what we call a workshop, and it is the CPD seminars. As you know, there are a large number of agents who attend those CPD activities. DIMA—

Senator TIERNEY—What percentage of your members would attend?

Mr Young—In Victoria? I cannot give you a national figure, but I can take it on notice.

Senator TIERNEY—Yes, thank you.

Mr Young—We can produce those figures. In terms of Victoria—and again I can talk only about members of the institute—we would have probably around about 60 per cent to 80 per cent turnout, and they tend to rotate because they have to attain those 10 CPDs. The majority of members of the institute are not just going to obtain their 10 CPDs, they tend to come along to most of them. If you want more information I can provide it to you.

Senator TIERNEY—Yes. I am interested in that as an educator.

Mr Young—In terms of the question about people who attend to give these instructions, they are generally, across the board, all very experienced and professional. In some cases they are lecturers or department heads who go through a process of educating the agents in that particular area—it may be in the cancellation of visas; it may be on refugees. We have a number of well-known barristers who appear to talk about the—

Senator TIERNEY—But they do not end up with accreditation as a result of that process, it is just some ongoing—

Mr Burhala—No. As I said, that is the MARA process—the Migration Agents Registration Authority process. If the committee would like more information about it, we would be more than happy to—

Senator TIERNEY—Yes. I am interested in the ongoing professional development.

Mr Burhala—Yes, we are looking at all those points.

Mr Young—I should point out, Senator Tierney, that the point I was raising before about the figures is on page 21 of the DIMA submission at 4.4.23. Again, we were referring to the low refugee producing nationalities and the increase.

Senator BARTLETT—I appreciate you are here as MIA, not as MARA, but you mentioned in your submission and, I think, in your comments about the RRT taking a more active role in reporting agents who are in breach of the code of conduct or perhaps agents who have prepared applications and then people do not show up. In your experience, does that not occur—the RRT basically does not feed back any concerns in that regard—or is it intermittent?

Mr Young—Again, we are representing the MIA today but, if the committee pleases, we can get information to the committee on some issues that have been raised by the RRT to the MARA. I am happy to go back to MARA and ask if we can get those details in writing for you of some recent information that has come to the authority's attention which we are currently investigating.

Senator BARTLETT—That would be appreciated from my point of view because obviously part of the intent, or all of the intent, of this whole area is preventing spurious applications. If there is a small group of people who seem to be encouraging that, then—

Mr Young—Thank you for the question. I thought this may arise today, but it is probably better if we get the information from our executive officer and we get the detail to you on what is happening in respect of that particular investigation, which may include a number of agents who I believe are not members of the institute. We can certainly provide that in some detail.

Senator BARTLETT—That would be good.

Mr RIPOLL—I am trying to come to a determination in terms of how you have arrived at a $5,000 figure and how you think this might be a better incentive not to breach, or have a mala fide application. Mr Burhala said it would be better if it was $5,000 because of better cost recovery and, 'What cost has the government had with a $1,000 fee?' I might put it to you that they actually have no cost, because they actually do not pursue the debt. The reason there is a $1,000 fee is not just necessarily as a deterrent; the $1,000 fee was determined in the first place because it is the trigger point at which, if a person has a debt to the Commonwealth, they are listed on the MAL system. So when you want to know why it is $1,000—and why not $1,200 or any other figure—it has got nothing to do with debt recovery, the cost to the government, or anything else; it is a nice deterrent perhaps for non-genuines—but we have not really seen clear

indicators of that—but, more importantly, it is to list on MAL. I am just wondering how you arrived at your $5,000 fee as a fair equitable figure in terms of deterring those non-genuine applicants.

Mr Young—You mentioned $50,000.

Mr RIPOLL—Why not $500,000? What I am doing is putting to you a question: where do you determine your figure? How do you formulate $5,000?

Mr Young—A lot of thought went into that. I think that originally when the executive was looking at it, a $5,000 fee was probably going to deter those people who come from those countries. I do not think the $1,000 has deterred people. But $5,000 is quite substantial. Most of these people—and, again, I cannot quote the figures—would probably be the ones who are lodging applications after the 45 days, therefore they are not getting permission to work. So $5,000 to them would seem to be an enormous amount of money which would probably deter them from going through that process because they are notified by Immigration about the fee anyway that is likely to be charged if they are unsuccessful, and that is where we came from in reaching that figure. My personal view is that I would like to see it a lot higher. But that is a personal opinion. In terms of the deterrent, it is, again, for the low producing refugee countries—the countries where you cannot dispute that applicants are coming in illegally, for example, from Iraq and Afghanistan, and the committee is probably aware that about 90 per cent of those people are found to be refugees.

Mr Burhala—If I can add something to that, obviously we represent the migration agents and obviously there are various views within the migration industry among the agents who are members of our organisation, in the same way, I am sure, that there are different views on this committee. The main thrust of our submission is that the fee be abolished altogether and that we look at alternative ways of preventing spurious applications. That is why, in our submission, we look at ways of improving the processes in the sense of shorter times for a decision from the RRT, for example, especially in cases where you have low refugee-producing countries. We see that as a higher deterrent than a $1,000 fee. The department is actually moving in that way. It was said here today, in the sense that the applications of people who come from these countries are fast-tracked. If something like that was to happen with the RRT as well, if the person arrived in Australia and they knew that within six months they would obtain a decision from the RRT and, therefore, that would severely limit their work prospects in Australia, that would certainly reduce the incentive for those mala fide applications to be lodged. But when they know that they can come here and there is a process that takes about two years, and that if they lodge within 45 days they get a permission to work, and they come from a country where the average wage is $100 a month, for example—and that is quite high because in some countries it is even less than that—then obviously a $1,000 fee is not going to deter those people from coming here and working for two years.

CHAIR—It also concerns me about our bona fide applicants when you start talking $5,000.

Mrs IRWIN—On page 45 of your submission you state that regulation 4.3.1B should be repealed. You also state that the department should look at ways of relaxing the grounds for removal of the 8503 condition. This is the 8503 on visitors' visas, no extension and no nothing. Are you finding that once their six weeks have expired, or their three months, that they are

actually now, because they cannot extend that, are applying for a protection visa? If that is the case, how would you modify 8503?

Mr Burhala—Obviously this is anecdotal evidence that people would come here and that they would have an 8503 condition on their visa. For some reason, they need to have that condition removed to extend their stay. In some situations, the way the condition is at the moment, it is very hard to have that condition removed, which leaves them with two choices: one is to stay here as an illegal and the second is to lodge a protection visa application, in which case most of the time they would probably lodge a protection visa application rather than remain here illegally.

Mr Young—I am sure the department of immigration could give you some evidence on how many applicants with the 8503 condition have applied. Also, it would be interesting for the committee to look at if it is after the 45 days or before the 45 days that the 8503 applies and, further to that, to look at what nationality. There is certainly evidence about these countries where the abuse is coming from.

Mrs IRWIN—Yes, we will check that.

Mr Burhala—We do not have access to that sort of information. From our members, that is one of the concerns that came through. There have been cases where an 8503 condition was very strict and was not removed. I am aware of one case, for example, where a lady who arrived here was pregnant at the time she arrived. An application was made because her visa was about to expire and she was about to give birth. An application was lodged to remove the 8503 condition to enable her to obtain a medical visa or a further stay visa of some sort to enable her to give birth to the child.

Through negotiations with the department of immigration, we were able to obtain a bridging visa which enabled the person to give birth and then leave the country without actually breaking any rules. But if it was someone looking for a quick way out, the quick way out would have been lodging a protection visa.

Mr Young—Mrs May, you were worried about the genuine applicants. The department of immigration made it clear in its submission that it has not deterred people from lodging applications.

CHAIR—It has not—but a $5,000 fee certainly might.

Mr Young—A $5,000 fee may, but it would not seem difficult to me for proposals to the minister to gazette certain countries. You have to tie it in together. If you can gazette certain countries that are clearly low refugee countries and tie that in with a regulation that imposes a very heavy penalty, you may fix it. But you will not be able to fix it in totality. The figures must speak for themselves: if you have only a two per cent set aside rate from those particular countries—

CHAIR—It is low, but there are still genuine issues.

Mr Burhala—I might have some concerns about gazetting countries in terms of what effect that would have with our international relations with the people in those countries.

CHAIR—Conditions in countries can change overnight, too.

Mr Young—I suppose it is just an observance. I do not really know how else you would do it. It is a difficult task—that is our opinion—but how else will you do it and fix the problems that you have?

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.

Committee adjourned at 12.21 p.m.