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Options to discourage abuse

4.1 Submissions and evidence to the Committee proposed a number of means by which abuse of the PV system might be reduced.

Identification of unfounded applications

4.2 RCOA urged the abolition of the fee and proposed instead that:

> new procedures be introduced to identify and expeditiously process manifestly unfounded applications to the RRT and therefore reduce the incentive to lodge an abusive claim. [1]

4.3 Similarly, JMVS proposed that applicants and agents filing "a refugee claim without prima facie evidence should be punished severely".[2]

4.4 The Committee noted that the existing sequence of primary consideration by DIMIA and the appeal process at the RRT already identified unfounded applications or those which did not make a *prima facie* case. It was the assessment that the applicants had not made their case which generated some appeals because the applicants did not share the assessor's view.

4.5 The Committee did not, therefore, believe that another layer of assessment would improve the existing means of testing applicants' claims to Australia's protection obligations. Further, an additional

1 RCOA, Submission No 3, p. 6, 4th recommendation.

2 JMVS, Submission No 4, para 8

step in the process would create another opportunity for potentially delaying appeals.

4.6 MIA offered a possible solution under which countries where DIMIA was aware that there was:

> a well founded fear of persons being persecuted could be gazetted whereby the $1,000 post RRT fee would not apply.[3]

4.7 DIMIA emphasised to the Committee that its use of the concepts of "high-refugee-producing" and "low-refugee-producing countries" was an analytical tool used only for the purposes of its current submission to the Committee. It foresaw that:

> if you start distinguishing between potential source countries in a formal sense, you do start to raise… foreign policy issues about the values of those judgments and… also raise the expectation that you are making a prima facie decision about people from certain countries as opposed to others.[4]

4.8 The Committee agreed that such a procedure of apparent pre-judgement of applications was not appropriate.

Conclusion

4.9 In the Committee's view, the proposals to identify unfounded applications was unlikely to improve the existing assessment process. The Committee therefore concluded the suggested approaches should not be adopted.

Alternative financial sanctions

4.10 MIA suggested that, rather than a fee, a bond might be appropriate, to be refunded if the application was successful.[5]

Conclusion

4.11 The Committee did not pursue this proposal because it would create a further layer of administration.

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3 MIA, Submission No 9, p. 2

4 DIMIA, Evidence, pp 59-60

5 MIA, Submission No 9, p .2 – the bond was a suggested component of the proposed gazettal of certain countries to which a fee would not apply.

Expeditious processing

4.12 In evidence to the Committee, LIV maintained that:

> there should be a quick and efficient method of the appeal going through the RRT… that would probably solve the problem of people… trying to stay in Australia with a work permit and Medicare… The only way to control it is by being quick and efficient about it, but ensuring, of course, that natural justice prevails all the time.[6]

4.13 In 2001/2 the RRT was composed of 40 full-time members and 25 part-time members who between them finalised 5,865 cases.[7]

4.14 The Tribunal's caseload management strategy gives priority to applicants in detention, aiming to finalise their cases within 70 days. The RRT timeframe for applicants not in detention was 118 days. In 2001/2 nearly three quarters of those cases were finalised within the 118 day timeframe.[8] Within those broad strategies the RRT focused its attention on old cases and also on countries where:

> the applicants rarely attend hearings and set aside rate is very low.[9]

4.15 In its Annual Report the RRT noted that productivity was limited by, among other issues, increasing complexity in the caseload, and the need to ensure that the written decisions take into account emerging Federal Court decisions and evolving legislative provisions.[10]

Conclusion

4.16 On the basis of the RRT's annual report the Committee thought that it sought to provide expeditious consideration to the types of claims which appeared to the Committee to be those likely to lack merit. The Committee had observed the Tribunal's operations and hearing arrangements and believed that its strategies were appropriate.

4.17 The Committee concluded that faster processing at the RRT would require additional resources.

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6 LIV, Evidence, p. 32
7 Refugee Review Tribunal, *Annual Report 2001-2002*, p. 2
8 Refugee Review Tribunal, *Annual Report 2001-2002*, p. 21
9 Refugee Review Tribunal, *Annual Report 2001-2002*, p. 1
10 Refugee Review Tribunal, *Annual Report 2001-2002*, pp 2-3

Non-financial sanctions

4.18 IARC and LIV[11] recommended repeal of the fee on the grounds that it was not needed to deter non genuine claims because, as IARC put it there was

> provision to restrict the right to work for applications made outside 45 days of entry, and the bar on subsequent on shore visa applications

were sufficient.[12]

4.19 The fee was a part of a group of related measures which took effect on 1 July 1997. They included:

- restriction in the provision of permission to work to applicants who have been in Australia for less than 45 days in the 12 months before the date of their protection visa application;
- restriction on access to Medicare to applicants who have been in Australia for less than 45 days in the 12 months before the date of their protection visa application; and
- the adoption of more strategic processing of applications to deal with unmeritorious claims expeditiously.[13]

4.20 A further sanction was that, under the Act, unsuccessful applicants for PVs cannot apply for any other visa onshore.[14]

4.21 According to DIMIA, sanctions such as the restriction on the right to work were designed to affect the primary application level. The fee, on the other hand, was "targeted at those applicants considering pursuing unmeritorious applications to the review stage."[15]

4.22 The Committee observed that the removal of the right to work applied only to applications made by those who had been in Australia more than 45 days. Since this sanction was imposed on 1 July 1997 the proportion of applications outside this deadline had fallen. It therefore might be assumed that it was becoming less effective as a deterrent. Applicants whose motivation was to exploit the PV

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11 LIV, Evidence, p. 32

12 IARC, Submission No 6, p. 2

13 DIMIA, Submission No 2, para 5.2.1

14 Section 98A -see DIMIA, Submission No 2, para 4.1.11

15 DIMIA, Submission No 2, para 5.2.2.

arrangements to work in Australia could be expected to meet the 45-day deadline.

Table 4.1 Percentage of Applicants who applied for a PV 45 days or more after Entry

	1995/6	1996/7	1997/8	1998-99	1999/00	2000/01	2001/02
Average of all Nationalities	58.45	64.10	44.78	38.17	43.34	39.64	38.12

Source DIMIA, Submission No 2, Table 5.2.1T

4.23 In addition, as DIMIA indicated, lack of work rights did not prevent a person from finding work.[16]

Conclusion

4.24 The Committee was not convinced that it would be prudent to rely only on sanctions such as the work and Medibank exclusions, particularly if the fee was working as a disincentive.

4.25 The Committee considers the evidence of the fee's effectiveness in the next chapter.

16 DIMIA, Submission No 2, , para 5.11.2