Dissenting Report: Senator Bartlett

The Committee has recommended that Migration Regulation 4.31B continue in force.[1] It has now gone further than in its two previous reviews of the regulation, which extended the sunset clause.

The position of the Department of Immigration and Multicultural and Indigenous Affairs is that the fee is a deterrent. [2] But at the same time, the Department admits that it is not possible to be sure of its effectiveness because it is part of a package of measures designed to reduce abuse of the Protection Visa system.[3]

Nevertheless, despite this ambiguity, the Department claims that the fee is sufficiently effective to merit continuation.[4]

The Committee concurs with the Department, on the basis that the fee does indeed deter abuse, (despite the unknowable contribution of the other parts of the package) and there is no evidence that bona fide applicants for Protection Visas (PV) are being deterred.[5]

The other parts of the package are not being reviewed by the Committee, only the fee. Therefore this dissenting report concentrates on the fee, examining its effectiveness and therefore its desirability from the points of view of the weight of informed opinion, logic, statistics, equity and pragmatism

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1 Joint Standing Committee on Migration, 2003 Report on Regulation 4.31B, Recommendation No 1

2 "the fee is acting as a disincentive for applicants who have no grounds for protection proceeding to the RRT". Department's submission at paragraph 7.2.1

3 "It is difficult to specifically ascribe changes in the profile of PV applicants to individual policy measures contained within the package, as the package operates as a whole". Department's submission at paragraph 5.5.28

4 "on all the evidence, the most appropriate course would be to remove the sunset provision from Regulation 4.31B". Department's submission at paragraph 7.3.3

5 Joint Standing Committee on Migration, 2003 Report on Regulation 4.31B, paragraphs 5.24, 6.20 respectively

The weight of informed opinion

In 1999, and again in 2001, and yet again in 2003, most submissions opposed the fee. In 2003, as in previous years, the opposition came from national and international bodies with expertise in refugee and migration matters. The Australian Catholic Migrant and Refugee Office (ACMRO); the Refugee Council of Australia (RCOA); Immigration Advice and Rights Centre (IARC); the Law Institute of Victoria (LIV); and Amnesty International Australia (Amnesty) all urged that the fee be abolished. [6]

Yet, despite the significant expertise and clear analysis of many of these groups, the Committee has not accepted their arguments, some of which are reviewed below.

A question of logic

The Law Institute of Victoria made the point that:

> *if the fee does work to deter applicants there is no way of assuring that it only deters those who are abusers of the system.*[7]

The Committee has not followed this logic. Instead it has accepted the arguments that the fee not only deters non-*bona fide* applicants, but simultaneously fails to deter *bona fide* ones.

Logically, if bona fide applicants are not to be deterred, the fee should not exist.

Slippery statistics

Statistically, the Department argues, and the Committee accepts, that the fee has had a discernable effect on non-*bona fide* applicants for review at the RRT.[8]

But, as the Refugee Council of Australia pointed out (using the Department's own statistics), the proportion of those refused asylum who seek review at the RRT has been increasing since the fee was imposed.

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6 Opponents of the fee in 2001 included: National Council of Churches in Australia, the Federation of Ethnic Communities' Councils of Australia, Amnesty International Australia and the Australian Section of the International Commission of Jurists, Australian Catholic Migrant and Refugee Office, Refugee Advice and Casework Service (Australia) Inc, Migration Institute of Australia, Network for International Protection of Refugees, Young Lawyers' Law Reform Committee, and Kingsford Legal Centre.

7 Law Institute Of Victoria at paragraph 4.2 of its submission (No. 8)

8 *bona fide* in this context includes not only those who are found to be refugees, but also those who apply to the RRT but who, despite their plight, do not meet the Refugee Convention requirements to be considered refugees.

> *For the period 1996-1997, 85% of those who received a primary rejection lodged at the RRT. The similar rate for 2001-2002 was 88% and this figure peaked at 91% during the previous financial year… this increase… would indicate that there has not been a general deterrence as might be expected with the introduction of $1000 fee*[9]

The clear conclusion is that, on the Department's own data, the fee has not had a significant effect.

The Department, however, made a more detailed argument in support of its case. It identified different trends in different applicant groups to sustain its argument that the *bona fide* applicants were not being deterred, but the abusive were.

This Departmental assessment of the effect on *bona fide* applicants depended on assessing the statistics relating to High Refugee Producing (HRP) nationalities. These were said to be a proxy for *bona fide* applicants. In the Department's view, the absence of any deterrent effect on *bona fide* applicants can be assumed from continued rise in the proportion of those unsuccessful HRP asylum seekers who seek RRT review.[10] The Department's claim seems to be that, in the case of bona fide applicants, the fee should continue to exist because it has no effect.

Self evidently, the same result could be achieved by having no fee.

The Department's counter to this line of thought was that the fee was necessary because of its measurable effect on abusive applications, as portrayed by the behaviours of their proxies, the Low Refugee Producing (LRP) countries.

The Department claimed that the fee discouraged non *bona fide* applicants because the proportion of unsuccessful applicants from LRP nationalities seeking RRT review was lower than the proportion from the HRP group.[11]

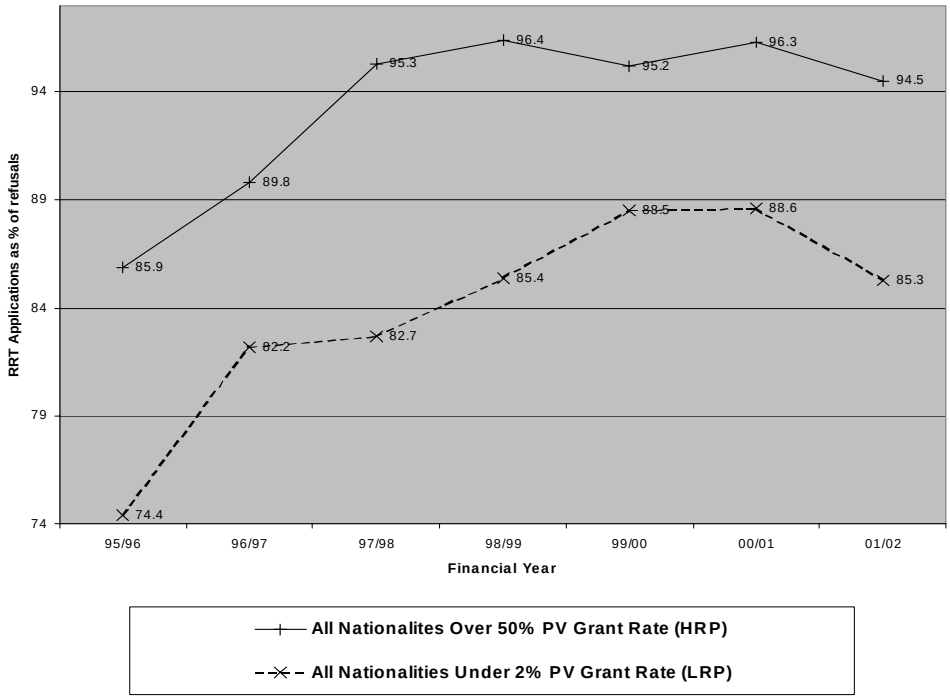
But this evidence is not conclusive, as can be seen in the Department's graph reproduced below. Firstly, the proportion of unsuccessful LRP asylum seekers applying to the RRT continued to increase immediately after the fee was introduced. Secondly, this LRP proportion is currently only marginally lower that the pre-fee HRP review application rate.

9 Refugee Council of Australia, Submission, page 3, using figures calculated from Table 5.1.1T in the Department's submission.

10 Department's submission at paragraphs 5.7.2- 5.

11 Department's submission at paragraph 5.6.3

5.6.1C RRT Take-up Rates 'High Refugee Producing' (HRP) and 'Low Refugee Producing' (LRP) Nationalities



Source: Department's submission, Graph 5.6.1C, data from Protection visa cohort.

Thus, for three of the five years of the fee's operation the proportion of the supposed abusive LRP group applying to the RRT has equalled or exceeded the proportion of pre-fee *bona fide* HRP applicants.

This is not convincing evidence that the fee has discouraged non *bona fide* asylum seekers from seeking RRT review.

The Department's counter argument was that the fee had slowed the growth of applications from unsuccessful applicants of LRP origins which would have occurred without the fee:

> *Continuing the dotted line between 1995-96 and the point at which the fee was introduced, you would have had low refugee producing countries at the same point in around 1998-99. That has not happened, and I think that is probably the most telling indication of the impact of the fee.*[12]

This argument is unconvincing because it assumes that the 1995/96-1996/97 LRP trend would have continued had the fee not been introduced.

Looking at the broad trends, therefore, it is difficult to see where the fee has had the significant impact claimed.

12 Department's evidence, p.57

Equity

Amnesty International Australia made the important point that the fee was an impediment to those vulnerable people who are seeking to gain Australia's protection as refugees because:

> *in informing them that if they go ahead with the appeal to the Refugee Review Tribunal they might be up against a $1,000 fee or will be in debt to the government, it is clearly not going to have a good effect on the bona fide claimants because there is such a low acceptance rate at the tribunal.*[13]

It is not appropriate to hold the threat of a fee (or fine) over some of our most vulnerable potential immigrants, particularly when there is doubt that it is achieving its purpose of deterring spurious appeals.

Pragmatic points

The Department claimed that if the fee was discontinued: it would "send inappropriate messages" to the Australian community in general.[14]

My view is to the contrary. Removing the fee would send a positive message to the Australian community that, as the Department claims, "the Australian Government is strongly committed to helping refugees and people who face serious abuses of their human rights."[15]

It is difficult to credit that removing the fee would, as the Department claims, send an inappropriate message to "those who are contemplating making an attempt to stay here for non-refugee related reasons", both in Australia and overseas,[16] when there is no convincing evidence that the existing fee is dissuading such applicants.

The revenue case for retaining the fee is also weak. The Department claims that:

> *the fees received have steadily increased to a significant level. Conservatively, cessation of the operation of the fee would result in*

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13 Amnesty, Evidence, p. 45

14 Department's submission at paragraph 6.1.1

15 DIMIA, Fact Sheet 60. *Australia's Refugee and Humanitarian Program,* http://www.immi.gov.au/facts/60refugee.htm

16 Department's submission at paragraphs 6.1.1 -6.2.3

> *revenue reduction of some $650,000 per annum. The potential loss in future years could be higher but is difficult to estimate.*[17]

The flaw in this argument is that the revenue stream hardly exists. More than 24,000 people have been found to be liable for the imposition of the $1,000 post review decision fee,[18] yet only $3,324,521 of the possible $24,000,000 has been collected. [19]

Table 5.8.2T – Net Revenue Received – 1997/98 to 2001/02

	1997/98	1998/99	1999/00	2000/01	2001/02
Net Revenue Received ($)	104,000	381,855	832,600	1,356,791	649,275

Source: Department's submission: Annual financial activity from the Departments financial information management system (SAP).

The Department also fears that removal of the fee could bring "a probable increase in unmeritorious primary applications"[20] and "costs to the RRT increasing significantly if 'LRP' flow on rates rise to 'HRP' levels".[21]

According to the Department there were 1,986 LRP applications for review at the RRT in 2001/2.[22] This represented 85.3per cent of those LRP being refused PVs.[23] If the proportion had in fact equalled that of HRP (94.5%)[24], as the Department speculated, the number of LRP applying would have been 2,200 or an increase of just 214 applications.

According to the Annual Report of the Refugee Tribunal, this would equate to the workload of approximately two full-time Tribunal members.[25]

As the Committee has, quite rightly, recommended an increase in resources for the RRT, the workload argument fails.[26]

17 Department's submission at paragraph 6.3.1
18 Department's submission at paragraph 5.8.4
19 Department's submission, Table 5.8.2T
20 Department's submission at paragraph 6.4.1
21 Department's submission at paragraph 6.4.2
22 Department's submission, Table 5.6.2T
23 Department's submission, Table 5.6.1T
24 Department's submission, Table 5.6.1T
25 Refugee Review Tribunal's Annual Report for 2001/2, p. 3 (average target/full time Sydney member = 125 cases)
26 Joint Standing Committee on Migration, 2003 Report on Regulation 4.31B, Recommendation No 3

Conclusion

In 1999 and in 2001 no clear evidence was presented to this committee, which proved that the introduction of a fee for access to review contributed to a reduction of abuse of the PV process. Once again the overwhelming evidence is that the fee does not counter abuse of the system and imposes unnecessary strain on applicants. Whilst I agree with recommendation No 3, that the Refugee Review Tribunal be given additional resources to carry out their duties expeditiously, I don't agree with the primary recommendations of the committee.

I recommend that the fee cease to operate and that resources be directed to ensuring review decisions are made promptly and correctly.

Recommendation

I recommend that the sunset clause for Migration Regulation 4.31B remain and that, therefore, the regulation ceases to apply after 30 June 2003.

Andrew Bartlett
Australian Democrat Senator for Queensland