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SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION ON MIGRATION REGULATION 4.31B

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Introduction:

The Refugee Council of Australia (RCOA) is Australia's peak non-government body representing approximately 180 organisations and individuals working with and for refugees, asylum seekers and displaced persons in Australia and around the world.

RCOA aims to promote the adoption of flexible, humane and constructive policies toward refugees, asylum seekers and displaced persons by the Australian and other Governments. In achieving this aim the Council monitors and responds to Government policy as it pertains to refugees and seeks to represent the views of our members to relevant legislative and policy bodies.

The Council has made previous submissions opposing the introduction of Migration Regulation 4.31B (the $1000 decision fee) and on this occasion seeks to reiterate some of our earlier views and address current concerns.

RCOA's Initial Views:

Following the announcement regarding the package of measures to be introduced, which included the $1000 decision fee at the Refugee Review Tribunal (RRT) and the requirement of on-shore protection visa applicants to lodge within 14 days to be eligible for work rights, the Refugee Council expressed a range of concerns such that:

- the imposition of the fee would be seen as a punishment for those who have compelling reasons why they are unable to return to their country of origin, but are not found to be refugees on Convention grounds; and
- in the absence of an administrative humanitarian stream, the fee would act as a de facto $1000 lodgment fee for those seeking humanitarian consideration under s417 of the Migration Act.

The Council was pleased to note alterations to the above measures such that the $1000 decision fee would not be applicable to those cases where the Minister exercises his discretionary powers in favor of the applicant. At the urging of agencies such as RCOA, the requirement of on-shore protection visa applicants to lodge within 14 days of arrival was extended to 45 days (known as the 45-day rule) in order for the applicant to be eligible for work rights. While the Council acknowledges these changes, our concerns regarding the intention, function and impact of the $1000 decision fee have not diminished since the introduction of the fee in July 1997.

Current Concerns:

Who is the $1000 decision fee targeting?

Migration Regulation 4.31B was introduced with a range of measures in an effort to create a disincentive and a deterrent to prevent 'non-bona fide' Protection Visa applicants from 'abusing' the determination and review system. While the Refugee Council acknowledges that there may be some applicants who knowingly seek to abuse the system, our concern is the failure of the regulation to distinguish between 'abusive' applicants and those who are unsuccessful.

To reiterate the views in expressed in a previous RCOA submission[1], the regulation appears to address this issue in a black and white manner whereas the Council would argue that the reality is far more complex. The reasons behind making a Protection Visa application are varied and ought to be examined in greater detail. These include:

- people with a well founded fear of returning to their country of origin on grounds consistent with the 1951 Convention Relating to the Status of Refugees;

- people with well founded fears of returning to their country for non-Convention reasons, such as the fact that their country is in a state of civil war and they fear generalised violence;

- people with compelling family or medical reasons to remain in Australia which should properly be brought to the Minister's attention;

- people who have no reason to remain other than a desire to extend their stay and who have sought advice from agents[2] who have promised them a "work visa" (usually at considerable expense). Commonly in such cases the applicant had no knowledge that this involved an application for a Protection Visa or that their conduct was in fact abusive; and

- people wishing to extend their stay in Australia (for economic or lifestyle reasons) who apply for a Protection Visa in full knowledge that it is not applicable to them.

The expressed intention of Migration Regulation 4.31B is to target those in the last group and deter them from seeking a review of their primary decision at the RRT in order to extend their stay. In reality, the regulation also targets those in the second, third and

[1] RCOA Submission to the Joint Standing Committee on Migration regarding Migration Regulation 4.31B, 1999.
[2] In many cases these agents are unregistered.

fourth groups who may be unsuccessful in their applications, but who are arguably not abusing the system.

Those in the second group genuinely believe they are refugees in that they have well founded fears of returning to a situation where they could be at risk of death or serious harm. While they may not neatly fit the Convention definition of a refugee there are compelling reasons why they should not be returned to their country of origin. In the absence of an administrative humanitarian stream, the only option for Ministerial consideration under s417 of the Migration Act is to access the Protection Visa application process.

Similarly, those in the third group, while they may be aware that they do not meet the definition of a refugee, have no alternative mechanism for Ministerial consideration of their case other than to apply for a Protection Visa and be rejected.

Members of the fourth group are not intentional abusers of the system but victims of unethical and unregistered agents who seek to gain financially from those who may be vulnerable and poorly informed. While the prevalence of this has decreased somewhat, there continues to be a significant problem requiring continued attention.

In reality, the $1000 decision fee is less likely to discourage intentionally fraudulent applicants, as they will possibly have a greater capacity to absorb the costs.

Has Migration Regulation 4.31B achieved it's objective?

In suggesting that the package of measures introduced in 1997 have achieved their intended outcomes, DIMIA points to a decrease of 32.5% in 2001-2002 of the number of applications to the RRT compared with the number of applications in 1996-1997[3]. This is attributed to the $1000 decision fee that came into effect in July 1997.

A closer examination of the figures would suggest different reasons for the decrease in applications to the RRT. The total number of Protection Visa applications (there is a clear flow on effect to the RRT) for the period 1996-1997 was 11,171 and the total number for 2001-2002 was 8,670[4]. This represents a 22% decrease, which could clearly account for a significant proportion of the decrease in applications to the RRT.

Perhaps a more accurate analysis of the impact of the $1000 decision fee would be to examine to the rates at which those applicants who were rejected at the primary stage sought a review of that decision at the RRT. 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[5].

While this increase in those seeking a review of their primary decision would indicate that there has not been a general deterrence as might be expected with the introduction of $1000 fee, there remains the issue of whether there has been an actual decrease in

[3] DIMIA Submission to the Joint Standing Committee on Migration on Migration Regulation 4.31B, February 2003, p. 18, 5.3.5.
[4] DIMIA Submission to the Joint Standing Committee on Migration on Migration Regulation 4.31B, February 2003, p. 15, Table 5.1.1T.
[5] Figures calculated from DIMIA Submission to the Joint Standing Committee on Migration on Migration Regulation 4.31B, February 2003, p. 15, Table 5.1.1T.

the number of 'abusive' applicants. In addressing this, DIMIA appears to equate 'abusive' applicants with those from Low Refugee Producing (LRP) Nationalities who may not have grounds for protection on Convention grounds[6]. In this regard, the Council would question the validity of such an analysis in determining the efficacy of Migration Regulation 4.31B. As illustrated earlier in this submission the Council would also argue that while an applicant may not meet the criteria of a Convention refugee he or she should not be viewed as 'abusive' and therefore by subject to a $1000 decision fee.

With regard to collection of the $1000 decision fee, on the 7th March 1999 the Minister stated in a press release that:

"Failed Protection Visa applicants owe Australia almost $2.8 million in $1000 Refugee Review Tribunal post-decision fees, payable when the Department's primary decision has been confirmed. Clearly, large numbers of protection claimants are choosing to thumb their nose at the laws of this country."

Immediately prior to making this statement the Minister acknowledged the Department's provision of $11 million to 1,050 Protection Visa applicants through the Red Cross Asylum Seeker Assistance Scheme. Applicants are no longer eligible for this assistance at the RRT and are without any means of income support, at which time they are required to pay the $1000 fee. Rather than acting with disregard to Australian law, many applicants are simply without the means to pay, having had those means removed by the same department that is now asking them to pay a $1000 fee.

How has Migration Regulation 4.31B impacted upon 'genuine' applicants?

The Minister stated in a press release on March 20 1997 in relation to the introduction of the $1000 decision fee that:

"This will not impose a burden on bona fide refugees and will act as a deterrent for people intent on abusing the system."

While there is no concrete evidence to suggest that the introduction of the decision fee has prevented bona fide applicants from seeking a review of their decision, there is substantial anecdotal evidence, which clearly demonstrates the adverse impact the $1000 decision fee on the psychological wellbeing and financial capacities of genuine applicants.

While many applicants to the RRT may have the benefit of sound legal advice from a registered migration agent, individuals continue to be vulnerable to misinformation within communities regarding the nature and function of the fee. Anecdotal evidence provided to the Council suggests that applicants are misinformed in a variety of ways, such as:

- payment of the fee will ensure that the Minister will consider their case;
- a favourable decision under s417 is dependent upon payment of the fee; and
- if the fee is not paid and a 'debt to the Commonwealth' is incurred then this will lead to a criminal charge.

[6] DIMIA Submission to the Joint Standing Committee on Migration on Migration Regulation 4.31B, February 2003, p.25, 5.6.3.

RCOA has raised the issue of unethical migration agents and unregistered advisors on many occasions and in previous submissions to the Committee. With regard to Migration Regulation 4.31B our concerns involve:

- Unethical or unregistered advisors that do not inform their clients of the regulation and add $1000 to typically exorbitant fees. Many applicants only become aware of the existence of the fee when they receive a letter from the RRT affirming the DIMIA's primary decision.

- Agents, that while informing their clients of the fee, offer to administer the payment on their clients behalf, but fail to forward payment to the RRT, regardless of the decision.

Regardless of the outcome for those seeking Ministerial intervention on humanitarian grounds (under s417), the anxiety of receiving a $1000 fee following a decision of the RRT exacerbates an already significant emotional and financial strain. Not only do applicants receive a letter of rejection indicating that once more their story has not been believed, but they also lose their right to work or their access to assistance through the Red Cross Asylum Seeker Assistance Scheme. Losing income security places applicants in a highly vulnerable position as they struggle to meet their most basic living needs – a vulnerability that is heightened by the possibility of incurring debt.

In an effort to obtain the necessary funds many people borrow money from family, their communities and sometimes enter into unmanageable financial arrangements with moneylenders. While incidence of the latter has decreased markedly, substantial debts continue to occur within families and communities placing additional emotional strain and anxiety on all concerned.

Conclusion:

In summary, the Refugee Council is opposed to Migration Regulation 4.31B in a number of respects:

- Migration Regulation 4.31B has not achieved its objective.
- The application of the regulation does not distinguish between an 'abusive' and unsuccessful applicant.
- The introduction of the fee has caused and continues to cause significant psychological and financial stress for people to whom Australia has protection obligations.

Recommendations:

As with our previous submission in 1999 the Refugee Council urges the Committee to recommend that:

- **the $1000 decision fee at the RRT be abolished after June 2003;**
- **increased measures are taken to curtail the activities of unscrupulous migration agents and unregistered advisors;**
- **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; and**
- **an inquiry be conducted into the feasibility of introducing an administrative determination for humanitarian status.**

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