

REPORT BACKGROUND

Regulation 4.31B

- 1.1 Migration Regulation 4.31B came into effect on 1 July 1997 and imposed a fee of \$1,000 on unsuccessful applicants to the Refugee Review Tribunal.

Origins

- 1.2 On 20 March 1997, the Minister for Immigration and Multicultural and Indigenous Affairs, Hon Philip Ruddock MP, announced extensive changes in the refugee determination process.¹ The changes affected the framework for work rights, the review application periods, and the review application fee for refugees. They also included a more strategic approach to Protection Visa applications, with DIMIA to give greater priority to straightforward applications and to use more streamlined methods, such as reduced documentation.² The Minister explained that:

1 Minister for Immigration & Multicultural Affairs, Media Release 28/97, *Sweeping Changes to Refugee and Immigration Decision Making*. www.immi.gov.au/media_releases

2 At the time, the portfolio covered only immigration and multicultural affairs. Indigenous affairs was added in November 2001

What we are seeking to do is to remove the incentives that are now current in the system that make it wide open to this form of abuse.³

- 1.3 Statutory Rules 109 of 1997 (SR 109 of 1997) contained many of the changes. These included measures:
- imposing a new 14 day period for RRT applications;
 - restricting access to work rights to refugee applicants who applied within 14 days of entering Australia; and
 - imposing a \$1,000 fee on unsuccessful applicants to the RRT.

Implementation

- 1.4 The fee, and the other changes in SR 109, was scheduled to take effect on 1 July 1997.

- 1.5 Before any changes could come into effect Senator Margetts (Greens, WA) gave notice of a motion in the Senate to disallow parts of the Statutory Rules. After negotiations with the Opposition, the Government decided to alter some parts of SR 109 of 1997. The alterations were made in Statutory Rules 185 of 1997. They included:

- extending the 14 day application period for the RRT to 28 days;
- ensuring that refugee applicants could have access to work rights if they applied within 45 days of entering Australia⁴;
- enabling the Minister to remove groups of people from the restriction on work rights where circumstances in their home country had changed since their arrival; and
- imposing a two year sunset clause on the \$1,000 post-decision fee for unsuccessful RRT applicants.

- 1.6 The sunset clause for the \$1,000 post-decision fee commenced on 1 July 1997 and was accompanied by the Government's undertaking to ask the Joint Standing Committee on Migration to review the issue in 1998.

3 *Hansard*, House of Representatives, 19 June 1997, p. 5858.

4 As opposed to the original 14 days

Operation of Regulation 4.31B

- 1.7 Regulation 4.31B provides that unsuccessful applicants to the RRT must pay the \$1,000 fee within seven days of receiving notice of the RRT decision. Where RRT applications have been combined, however, only one fee per family is imposed, irrespective of the number of applicants, and there are two exceptions where the fee is to be refunded or waived.⁵
- 1.8 Where an applicant cannot pay the fee within seven days, the fee becomes a debt payable to the Commonwealth, and an entry is placed in the Movement Alert List (MAL). If the person leaves Australia and later seeks to return, officers processing visas would be alerted to the existence of a debt through the MAL record. This may prevent the person from returning, for it is a prerequisite for the grant of offshore visas that applicants meet public interest criterion 4004 of the Migration Regulations. That provision states:
- The applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment.
- 1.9 Applicants who later seek to return to Australia but who have not paid or made arrangements to pay the \$1,000 fee would therefore have their applications refused.
- 1.10 More detailed information concerning the refugee determination process can be found in Appendix D.

Previous reviews by the Committee

- 1.11 The Committee tabled a review of Migration Regulation 4.31B in May 1999 which recommended that it continue, but be subject to a three year sunset clause commencing on 1 July 1999. Subsequently the duration of the sunset clause was reduced to two years, expiring on 30 June 2001.
- 1.12 The Committee again reviewed Migration Regulation 4.31B in April 2001, and recommended further extension of the sunset clause to 30

⁵ Regulation 4.31C provides that the fee must be refunded or waived if:

- the applicant seeks judicial review, the case is subsequently remitted to the RRT, and the Tribunal finds in the applicant's favour; or
- the Minister substitutes a favourable decision for that of the RRT by using the power under s.417 of the Migration Act.

June 2003.⁶ It also recommended that the Regulation be subject to further review prior to that date.

6 Dissenting reports in both 1999 and 2001 recommended that Regulation 4.31B cease to operate.