

Abuse of the protection visa arrangements

- 3.1 The PV process is intended to meet Australia's obligation to permit refugees to gain Australia's protection and Migration Regulation 4.31B is intended to prevent abuse of that process. As LIV pointed out, there was

abuse in every system in which people are accessing a right to review and appeal and to have their case heard.¹

Possible motivations

- 3.2 The submission from JMVS suggested that applicants might pursue an appeal to the RRT because:

the appeal system allows them to keep staying in Australia legally with Work Right. A few years later, even if their cases fail at the High Court, by the time they should have made at least a small fortune before heading back home.²

1 LIV, Evidence, p. 33

2 JMVS, Submission No 4, para 5

3.3 RCOA noted that there were some:

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.³

To what extent does abuse exist?

3.4 DIMIA's view was that there were *bona fide* applicants who genuinely fear for their safety but there were others who did not genuinely fear for their safety and who were misusing the PV system for other reasons.⁴

3.5 Amnesty concurred, stating that, like asylum determination systems elsewhere, Australia's was subject to a certain level of abuse,⁵ and that there were nongenuine applicants.⁶

3.6 Examination of the fate of applications for review by the RRT indicates that the Tribunal set aside (i.e. disagrees with DIMIA's refusal of a PV) only one in 10 applications between 1995/96 and 2001/2 (See Table 3.1 below)

3.7 This did not mean that the other 90 percent of claims which failed in their RRT appeal were attempts to abuse the PV process. As Amnesty pointed out in its submission:

an application to the RRT may be unsuccessful; it does not necessarily indicate that the claim was unfounded or was not legitimate... there will be instances where asylum-seekers with legitimate fears of being subjected to serious human rights violations upon forcible return may fall outside of the scope of the Refugee Convention.⁷

3 RCOA, Submission No 3, p. 2

4 DIMIA, Submission No 2, para 5.4.4

5 Amnesty, Submission No 7, p. 3

6 Amnesty, Evidence, p. 45

7 Amnesty, Submission No 7, p.3.

Table 3.1 Total Number of Protection Visa Applicants and Results by Financial Year

Year of PV application	PRIMARY APPLICATION			RRT Lodged	RRT Set Aside
	RECEIVED	GRANTED	REJECTED		
1995/96	8,100	1,195	6,382	5,142	596
1996/97	11,171	869	10,043	8,496	998
1997/98	8,155	693	7,246	6,216	800
1998/99	8,407	983	7,237	6,412	668
1999/00	12,172	4,221	7,485	6,755	812
2000/01	13,127	3,325	8,914	8,115	828
2001/02	8,670	1,431	6,526	5,734	247
TOTAL	69,802	12,717	53,833	46,870	4,949

Source Protection visa cohort data in DIMIA, Submission No 2, Table 5.1.1T

3.8 Amnesty also concluded, on the basis of its casework and data from the Refugee Advice and Casework service, that some refusals at the RRT stage also indicated that the applicants might have suffered from misinformation or from being unrepresented.⁸

3.9 DIMIA identified *bona fide* applicants as including those who:

- genuinely feared for their safety if they were to return to their country of origin (whether or not they might meet the Refugee Convention criteria for refugee status);or
- had legitimate grounds to seek Ministerial consideration in their case.⁹

3.10 RCOA identified two groups of applicants who would not engage Australia's protection under the Refugee Convention but whose applications were not attempts to exploit the process. These were applicants 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;¹⁰ or with

8 Amnesty, Evidence, p. 41

9 DIMIA, Submission No 2, para 5.4.4

compelling family or medical reasons to remain in Australia which should properly be brought to the Minister's attention.¹¹

3.11 IARC provided more information about the latter category, where for:

people who... do not meet the criteria for a particular visa subclass, the only option is to access the minister's discretion... [through] the lodgement of a protection visa application.¹²

3.12 The Committee considered that these groups also fitted DIMIA's description of *bona fide* applicants.

Abuse of the system can be described...

3.13 According to DIMIA, the abuse of the process was by

applicants who do not genuinely fear for their safety and are misusing the PV system for other reasons, such as work rights and Medicare cover, prolonging lawful stay and/or the possibility of obtaining permanent residence through provision of fraudulent claims.¹³

3.14 However, RCOA also identified a group which might fit DIMIA's description of those misusing the process criteria, but claimed that these applicants were not deliberately abusing the process. These, RCOA said, were applicants who had:

a desire to extend their stay and who have sought advice from agents who have promised them a "work visa" (usually at considerable expense). [BUT] Commonly in such cases the applicant had no knowledge that this involved an application

10 RCOA, Submission No 3, p. 2 "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."

11 RCOA, Submission No 3, p.2. "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."

12 IARC, Evidence, p. 15. Amnesty, Evidence, pp 46-7 cites as an example East Timorese now applying for PVs "knowing that they really need to appeal to the minister first and foremost".

13 DIMIA, Submission No 2, para 5.4.4

for a Protection Visa or that their conduct was in fact abusive.¹⁴

- 3.15 This group, the Committee considered, might also fit the description of *bona fide* applicants if indeed their perceived abuse of the system arose from the actions of their advisors, rather than from a deliberate intent to exploit the PV appeal system.

... but not measured

- 3.16 DIMIA does not keep data which would permit the identification of the *bona fide* and other applicants, and argued that to attempt to do so would involve the case manager making an assessment of an applicant's motivations in applying for protection.¹⁵
- 3.17 The Committee considered that such judgements were not an appropriate undertaking for DIMIA, and that its concern should be with the relevance of the information provided to the criteria applicable to PV applications.

Indicators of abuse

Implicit indications

- 3.18 DIMIA claimed "the evidence points to continuing misuse of the PV system"¹⁶ and argued that while some applicants might:

"unwittingly pursue an asylum claim either through lack of knowledge or because of misleading information from advisors... It would appear realistic to conceive that a substantial percentage of the 50,857 protection visa applicants found not to be refugees over the last 7 years held some degree of knowledge as to their lack of refugee claims."¹⁷

14 RCOA, Submission No 3, p.2. "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."

15 DIMIA, Submission No 2, para 5.4.5

16 DIMIA, Submission No 2, para 5.4.5

17 DIMIA, Submission No 2, para 5.5.4

Failure to pursue RRT opportunities

- 3.19 DIMIA also pointed out that since the introduction of the fee in mid 1997, one third¹⁸ of adverse PV decisions were affirmed by the RRT without the applicant appearing to give evidence. This was despite unsuccessful applicants being offered the opportunity to appear because the RRT was considering making an unfavourable decision. DIMIA argued from this evidence that a:

bona fide applicant, truly believing that a mistake has been made in the primary assessment of their refugee application could be expected to ensure that they provide evidence to the RRT to support their case¹⁹...

The most reasonable explanation is that in the majority of these cases the applicants are not seriously pursuing their claim for refugee status. This is evidence of the existence of continuing misuse of the PV process even after the introduction of the package of which the fee is a part.²⁰

Conclusion

- 3.20 All submissions received by the Committee and which commented on the issue of abuse of protection visa arrangements agreed that abuse existed.
- 3.21 The Committee concluded that, although the scale could not be precisely determined, there was evidence of abuse of the PV system.
- 3.22 The Committee therefore examined options which might be available to counter such abuse as existed.

18 33.9% DIMIA, Submission No 2, Table 5.5.1T

19 DIMIA, Submission No 2, paras 5.5.5.-7

20 DIMIA, Submission no 2, para 5.5.23