

Effect of the fee on *bona fide* applicants

6.1 LIV raised the point that, because an effective deterrent will deter, then:

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.¹

Access to the RRT

6.2 The Committee, in this and its earlier reviews, had been concerned that the fee should not discourage unsuccessful PV applicants from pursuing review by the RRT.² The Committee therefore sought evidence on the degree to which *bona fide* applicants might be deterred and was given contradictory advice.

6.3 DIMIA's submission on this issue focussed on the statistics of applicants of high refugee producing nationalities, (those most likely to have a concentration of *bona fide* applicants)³, and concluded that the:

1 LIV, Submission No 8, para 4.2

2 See Joint Standing Committee on Migration, *Review of Migration Regulation 4.31B*, pp 17-22; *2001 Review of Migration Regulation 4.31B*, pp 17-20

3 "those nationalities from which, over the seven financial years 1995/96 to 2001/02, ten or more applicants have applied for PV and the grant rate is 50% or above" There could be expected to be a "concentration of *bona fide* applicants within the group of 'HRP' nationalities". DIMIA, Submission No 2, paras 5.5.13; 5.7.3 respectively

data strongly suggests that people with a fear of persecution, whether subjective or objective, are not deterred from making an RRT application by the existence of a post review decision fee.⁴

6.4 RCOA also concluded that:

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.⁵

6.5 In his submission, Mr G. Kimberly agreed that there was

no evidence to suggest that Regulation 4.31B has deterred genuine refugees⁶

6.6 However, in the opinion of Amnesty:

these people do not have much money... So, 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.⁷

6.7 The Committee accepted that DIMIA's analytical approach of identifying "high refugee producing" nationalities was a useful tool in assessing the possible impact of the fee on potentially *bona fide* applications.

6.8 The Committee noted that the two submissions (LIV and Amnesty) which concluded that the fee discouraged bona fide applicants from pursuing a review at the RRT did so on the basis of a potential effect, rather than offering concrete examples.

6.9 DIMIA also argued in support of its contention that the fee did not affect *bona fide* applicants:

it is unlikely that a person would be deterred from applying for review by a \$1000 fee they did not expect to have to pay because they were genuine refugees.⁸

4 DIMIA, Submission No 2, paras 5.7.4-5

5 RCOA, Submission No 3, p. 3

6 Kimberley, Submission No 1, p. 1

7 Amnesty, Evidence, p. 45

8 DIMIA, Submission No 2, paras 5.7.4-5

Conclusion

- 6.10 The Committee therefore concluded that it did not appear that the fee discouraged bona fide applicants from pursuing an RRT review.
- 6.11 The Committee was, however, aware that a number of submissions highlighted what they considered were adverse effects of the fee.

Other effects

- 6.12 Although they agreed that the fee did not appear to have discouraged *bona fide* applicants, RCOA and IARC were concerned about what RCOA described as:

the adverse impact the \$1000 decision fee on the psychological wellbeing and financial capacities of genuine applicants.⁹

- 6.13 In the words of IARC:

the post decision fee can have harsh consequences on Australian families who are financially, culturally or otherwise disadvantaged...

the effect of s48 of the Migration Act, which bars the making of further visa applications in Australia following a visa refusal, means that it is specifically those financially disadvantaged applicants who comply with the law and leave Australia to make a further visa application from offshore who may be adversely affected by the post decision fee.¹⁰

ultimately the only people who are really compelled to pay the fee are those who seek to return to Australia following an unsuccessful protection visa claim.¹¹

- 6.14 Amnesty, in its submission, also raised the issue of potential negative consequences of the fee, saying that, because the fee cannot be waived on the ground of financial hardship:

9 RCOA, Submission No 3, p. 3

10 "This occurs in the situation where they are unable to afford to pay the fee, and therefore have an outstanding debt to the Commonwealth. More likely than not, these will be offshore spouse applications and therefore an Australian permanent resident or family unit is adversely affected by this provision." IARC, Submission No 6, p. 2

11 IARC, Evidence, p. 14

for many asylum seekers, who won't have the money to pay their debt, this means that they don't have an option to obtain another, non-humanitarian, visa.¹²

- 6.15 LIV echoed this concern that the fee imposed “unduly harsh penalties” on applicants with few available financial resources.¹³
- 6.16 IARC suggested that some of these implications might be avoided if the applicant could withdraw the application, and make a new application for another type of visa while remaining in Australia.
- 6.17 DIMIA, in response to the Committee's inquiry, indicated that:
- the impediment to getting a further visa... disappears if you have entered into an agreement... satisfactory to the Commonwealth, to pay off the debt.¹⁴

Conclusion

- 6.18 The Committee was not inclined to pursue the IARC suggestion that applications for PVs might be withdrawn and thus permit applications for other visas to be made because this could imply that a PV application was merely an opening bid to remain in Australia. This is at odds with its prime purpose, which is to provide an avenue for those seeking to engage Australia's protection obligations.
- 6.19 The Committee noted that there could be adverse financial outcomes from an unsuccessful application for review. This would affect both the *bona fide* applicants and abusers of the PV arrangements, unless they were able to make payment arrangements with the Commonwealth.
- 6.20 However, the Committee was more concerned that *bona fide* applicants should not be dissuaded from seeking review of an adverse decision, and there was no evidence offered that this was occurring.
- 6.21 Prior to assessing the application of the fee itself, the Committee addressed a number of other issues which had been raised during the review. These are discussed in the following chapter.

12 Amnesty, Submission No 7, p. 4

13 LIV, Submission No 8, paras 2.7, 2.1

14 DIMIA, Evidence, p. 51