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The Parliament of the Commonwealth of Australia

# **2003 Review of Migration Regulation 4.31B**

Joint Standing Committee on Migration

April 2003  
Canberra

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## **Foreword**

Migration Regulation 4.31B imposes a \$1,000 fee on those whose claim for refugee status has been refused and whose subsequent appeal to the Refugee Review Tribunal for refugee status under the United Nations Refugee Convention and Protocol is again refused. The purpose of this fee is to deter non-genuine applications for review, that is, applications by people who know that they are not refugees and who may simply wish to extend their stay in Australia.

The Committee reviewed the operation of the regulation in 1999 and again in 2001 and reported its conclusions and recommendations to Parliament. In both reviews the Committee concluded that the effect of the regulation was difficult to establish and recommended the retention of the sunset clause and further reviews when the regulation had been in operation for a longer period.

In December 2002 the Minister requested that the Committee review the operation of the regulation again, prior to its expiry date of 30 June 2003.

The review was advertised in the national press on 5 February 2003. Prior to this the Committee had invited all those who had made submissions to the previous inquiries in 1999 and 2001 to participate in the 2003 review.

Those who chose to provide submissions are listed in Appendix B. The Committee held two public hearings in Canberra and took evidence from four organisations. Details of the hearings and witnesses are in Appendix C.

**Ms Teresa Gambaro, MP**  
**Chair**







## **Membership of the Committee**

**Chair** Ms Teresa Gambaro, MP

**Deputy Chair** Mr Bernie Ripoll, MP

**Members** Mr Laurie Ferguson, MP

Mrs Joanna Gash, MP

Mrs Julia Irwin, MP

Mr Don Randall, MP

Senator Andrew Bartlett

Senator Alan Eggleston

Senator Linda Kirk

Senator Tsebin Tchen

## **Committee Secretariat**

**Secretary**      Mr Richard Selth

**Inquiry  
Secretary**      Dr Steve Dyer

**Administrative  
Officer**      Mr Peter Ratas



## **Terms of reference**

*The Hon Philip Ruddock, Minister for Immigration and Multicultural and Indigenous Affairs, wrote to the Chair of the Joint Standing Committee on Migration:*

I am referring the further review of regulation 4.31B to the JSCM at this time to enable the Committee to consider and report on this matter in sufficient time for regulation amendments to be made should they be necessary. I would appreciate that the Committee complete its review and report to Parliament before 30 April 2003.

Referred to the Committee by the Minister on 10 December 2002.

Adopted by the Committee on 12 December 2002.



## List of abbreviations

ACMRO	Australian Catholic Migrant and Refugee Office
Amnesty	Amnesty International Australia
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
HRP	High Refugee Producing Nationalities
IARC	Immigration Advice and Rights Centre
JMVS	Justice Migration & Visa Services
LIV	Law Institute of Victoria
LRP	Low Refugee Producing Nationalities
MARA	Migration Agents Registration Authority
MIA	Migration Institute of Australia
PPV	Permanent Protection Visa
PV	Protection Visa
RCOA	Refugee Council of Australia
RRT	Refugee Review Tribunal
TPV	Temporary Protection Visa



# Glossary

## BONA FIDE

Applicants who genuinely fear for their safety if they were to return to their country of origin or have legitimate grounds to seek Ministerial consideration in their case. They need not, however, meet the Refugee Convention definition of a refugee.<sup>1</sup>

## HIGH REFUGEE PRODUCING NATIONALITIES (HRP)

'HRP' nationalities are those nationalities from which, over each of 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. DIMIA expected *bona fide* applicants to be concentrated in this group. [NOTE this grouping is an analytical tool that used only for the purposes of DIMIA's submission on this regulation.]<sup>2</sup>

## LOW REFUGEE PRODUCING NATIONALITIES (LRP)

'LRP' nationalities are those from which, over each of the seven financial years 1995/96 to 2001/02, ten or more applicants have applied for PV and the grant rate is below 2% (DIMIA Submission, para 5.5.13).

DIMIA expected applications from persons who have no grounds for protection to be concentrated in this group<sup>3</sup> [NOTE this grouping is an analytical tool that used only for the purposes of DIMIA's submission on this regulation.]<sup>4</sup>

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<sup>1</sup> DIMIA, Submission No 2, para 5.4.4

<sup>2</sup> DIMIA, Submission No 2, paras 5.5.11, 5.5.13; Evidence, p. 59

<sup>3</sup> DIMIA, Submission No 2, para 5.5.12

<sup>4</sup> DIMIA, Evidence, p. 59

## **MALE FIDE**

Applicants who do not genuinely fear for their safety and are accessing the Protection Visa system for other reasons.

## **NON-REFOULEMENT**

The Convention relating to the Status of Refugees (1951) states, under Article 33. Prohibition of expulsion or return ("refoulement"), that:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.<sup>5</sup>

## **PROTECTION VISA (PV)**

This visa is issued to applicants who the Minister is satisfied Australia has protection obligations under the Refugees because:

- they have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion;
- are outside the country of their nationality; and
- are unable or, owing to such fear, are unwilling to avail themselves of the protection of that country.

**A Permanent Protection Visa (PPV)** gives a refugee:

- permanent residence;
- access to Australia's public health system;
- permission to work;
- access to welfare benefits;
- permission to travel and enter Australia for five years after grant; and
- eligibility to apply for citizenship after two years permanent residence.

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<sup>5</sup> [http://www.unhcr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_c_ref.htm)

A Temporary Protection Visa (TPV) gives a refugee:

- three year temporary residence in the first instance. TPV holders are able to apply for a further protection visa which may be granted after 30 months if they still need protection at that time;
- access to Australia's public health system;
- permission to work;
- access to a limited range of welfare benefits (including Special Benefit, Rent Assistance, Maternity and Family Allowances and Family Tax Payment); and
- eligibility for referral to the early health assessment and intervention program and torture and trauma counselling.

The TPV provides no rights for people to bring their families into Australia and does not provide an automatic right of return to Australia.<sup>6</sup>

## REFUGEE

According to the 1951 Convention Relating to the Status of Refugees, a refugee is a person who: "owing to a well-founded fear of being persecuted for reasons of:

- race,
- religion,
- nationality,
- membership in a particular social group, or
- political opinion,

is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country." <sup>7</sup>

## TAKE-UP RATE Refugee Review Tribunal (RRT)

The proportion of unsuccessful primary applicants who have taken their cases to the RRT.

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<sup>6</sup> DIMIA, Submission No 2, p 40

<sup>7</sup> <http://www.unhcr.ch/cgi-bin/tehis/vtx/home>







## **List of recommendations**

### **Chapter 8 Imposition of the fee**

#### **Recommendation 1**

The Committee recommends that Migration Regulation 4.31B remain in operation subject to a two year sunset clause, commencing on 1 July 2003, and that its operation be reviewed by the Committee in 2005.

#### **Recommendation 2**

The Committee recommends that the fee applied under Migration Regulation 4.31B be raised to \$1,400, which is in line with the fee levied for an application for a review by the Migration Review Tribunal.

#### **Recommendation 3**

The Committee recommends that additional resources be made available to the Refugee Review Tribunal to provide more expeditious hearing and finalisation of cases coming before it.

