

Tabled 9 December 2002

GOVERNMENT RESPONSE TO THE REVIEW OF MIGRATION REGULATION 4.31B BY THE JOINT STANDING COMMITTEE ON MIGRATION

1. Government Objectives

1.1 The Government remains strongly committed to meeting Australia's international obligations under the Refugees Convention.

1.2 The Government also remains committed to fulfilling its non-refoulement obligations to persons who are not found to be refugees under the Convention, but who are found to have humanitarian reasons to remain in Australia under the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), or the International Covenant on Civil and Political Rights (ICCPR).

1.3 The Government meets these international obligations through the grant of protection visas to those persons who are found to be refugees under the definition in the Refugees Convention, and through the exercise of the Minister's discretion to grant visas to persons who fall under the provisions of the CAT or ICCPR.

2. Background

2.1 In 1997 the Government, concerned that increasing numbers people who did not possess genuine refugee or humanitarian reasons for remaining in Australia were making unmeritorious applications for protection visas (PVs), introduced a package of measures designed to reduce the scope for abuse of the PV process. One of these measures was the introduction of a \$1,000 fee for protection visa applicants who were unsuccessful at the Refugee Review Tribunal (RRT).

2.2 The fee is payable only after an adverse decision is handed down by the RRT. Successful review applicants do not become liable for the fee. Further, the fee is refunded or waived for applicants who are unsuccessful at the RRT but who are subsequently granted visas through the exercise of the Minister's discretionary public interest powers under s417 of the *Migration Act 1958*. The effect of this arrangement is that genuine applicants are not deterred from seeking review at the RRT by the operation of the fee.

2.3 The regulations (Migration Regulations 4.31B and 4.31C) establishing the fee were subject to a two year sunset clause to take effect from 1 July 1999. Following a review in 1999 of the operation of the fee by the Joint Standing Committee on Migration (JSCM) the sunset clause was extended to 30 June 2001.

2.4 In August 2000, the JSCM was again requested to review the impact of the fee and to report to the Parliament. The Report of the JSCM "2001 Review of Migration Regulation 4.31B" was tabled in the Parliament on 18 June 2001 with a majority of the Committee recommending an extension of the sunset clause to 30 June 2003. A dissenting report was made by Senator Andrew Bartlett.

3. Majority Report

3.1 The majority report accepted that:

- there is significant deliberate abuse of the PV process (paragraph 2.15);
- a decline in the take-up rate for 'low refugee producing' nationalities indicated that there was a deterrent effect for *mala fide* applicants (paragraph 2.37);
- the available statistical information indicated that *bona fide* applicants were not being discouraged from applying for review (paragraph 2.51); and
- that many suggested proposals for administrative change were not appropriate (paragraphs 3.6, 3.10, 3.13, 3.16, 3.22 and 3.25).

3.2 The Committee consequently recommended that:

- DIMIA systematically examine the full range of existing migration processing and review arrangements with a view to further streamlining them (Recommendation 1 - paragraph 2.16);
- the activities of migration agents be brought under closer scrutiny by DIMIA and the Migration Agents Registration Authority (Recommendation 2 - paragraph 3.47); and
- that Migration Regulation 4.31B be retained, subject to a two-year sunset clause commencing on 1 July 2001, and that its operation be reviewed by the Committee early in 2003 (Recommendation 3 - paragraph 4.59)

3.3 The Government accepts the Committee's findings contained in the majority report.

4. Majority Recommendations

Recommendation 1

The Committee recommends that DIMA systematically examine the full range of existing migration processing and review arrangements with a view to further streamlining them.

4.1 The Department of Immigration and Multicultural and Indigenous Affairs Client Service Charter commits the Department to striving to improve its services. This includes continuous process improvement.

4.2 The Department, in collaboration with the Migration Review Tribunal and the RRT, examines existing processes and procedures continuously to improve administrative efficiency without negatively affecting the quality of decision-making. This work will continue into the future.

Recommendation 2

The Committee recommends that the activities of migration agents be brought under closer continuing scrutiny by DIMA and the Migration Agents Registration Authority.

4.3 Both the Migration Agents Regulation Authority and the Department are continually seeking to improve the operation of the regulatory framework and professional standards within the industry.

4.4 A full review of the migration advice industry has commenced and will be completed towards the end of the year. The review will report on the effectiveness of the current system of statutory self-regulation, including the nature and level of scrutiny of migration agents.

Recommendation 3

The Committee recommends that Migration Regulation 4.31B be retained, subject to a two-year sunset clause commencing on 1 July 2001, and that its operation be reviewed by the Committee early in 2003.

4.5 The Government has decided to implement Recommendation 3 in full. Regulations extending the sunset clause for a further two years were made with effect from 1 July 2001.

4.6 Further the Government intends that another review of Regulation 4.31B be undertaken by the JSCM prior to the expiry of the sunset clause on 30 June 2003.

5. Dissenting Report

5.1 A dissenting report was tabled by Senator Andrew Bartlett. Senator Bartlett recommended that Regulation 4.31B cease to operate after 1 July 2001.

5.2 This report commented that:

- nearly two thirds of submissions to the review opposed the fee; and
- many submissions raised the issue of hardship caused to applicants by the fee and cited an example given by Kingsford Legal Centre to show the effect of the fee on an asylum seeker.

5.3 The dissenting report concluded:

- that it is not obvious that there is significant abuse (of the PV system);
- that the positive effects of the fee which were expected have not occurred; and
- the fee has a negative effect on applicants.

5.4 The Government acknowledges the contribution of Senator Bartlett and accepts that his intentions are similar to those of the Government, in seeking to ensure that Australia continues to fulfil its international refugee and humanitarian obligations to a high standard, and to reduce the levels of abuse of the system.

5.5 However, the Government considers that the dissenting report's recommendation would have a significant negative effect on the outcomes for the protection visa system.

5.6 The review has clearly shown that there is still substantial abuse of the PV process. Evidence was given by the RRT and Migration Institute of Australia to that effect. An indicator of the level of abuse is that 34% of all RRT decisions are affirmed without the applicant availing themselves of an opportunity to attend a hearing to present their case. While the Department's submission to the Committee advanced reasons for this, no other submissions or evidence to the Committee were able to provide a plausible alternative explanation why this occurs.

5.7 The Government does not accept the conclusion in the dissenting report that the expected positive effects of the fee have not occurred. Evidence submitted to the Committee clearly showed the fee has been a deterrent to prospective RRT applicants of 'low refugee producing' nationalities, the group in which more non-genuine applications are found.

5.8 While some submissions argued that the fee had a negative effect on some applicants, the Government does not accept that any perceived adverse effect outweighs the positive effect the fee has as a deterrent and a partial cost recovery measure. The research on review applications and success rates indicates that the disincentive effect of the fee focussed on those applicants who are not refugees. The Government also notes that no concrete evidence was supplied to the Committee to show that the fee dissuaded any genuine applicant from applying to the RRT for review of their primary decision.