

GOVERNMENT RESPONSE

**REPORT OF THE
2003 REVIEW OF MIGRATION REGULATION
4.31B**

**BY THE
JOINT STANDING COMMITTEE ON MIGRATION**

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 while minimising the potential of Australia's onshore protection process to be misused by people merely seeking to prolong their stay in Australia for other reasons.

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 section 417 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 reviews of the operation of the fee in both 1999 and 2001 by the Joint Standing Committee on Migration (JSCM) the sunset clause was extended to 30 June 2003.

2.4 In December 2002, the JSCM was again requested to review the impact of the fee and to report to the Parliament. The Report of the JSCM "2003 Review of Migration Regulation 4.31B" was tabled in the Parliament on 13 May 2003 with a majority of the Committee recommending an increase to the fee amount and an extension of the sunset clause to 30 June 2005. A dissenting report was made by Senator Andrew Bartlett.

3. Majority Report

3.1 The majority report accepted that:

- there is evidence of the abuse of the protection visa (PV) process (paragraph 3.20);

- a decline in the take-up rate for applications for RRT review by persons from 'low refugee producing' nationalities indicates that the fee acts as a deterrent for non-genuine PV applicants (paragraph 5.23);
- the available statistical information indicates that the fee does not act as a disincentive for bona fide applicants applying for review of an adverse decision (paragraph 6.20);
- there is no evidence that the fee breaches Australia's international obligations by deterring bona fide applicants from applying for review (paragraph 7.22); and
- waiving the fee would provide further opportunity and encouragement to those who are not genuine refugees to prolong their stay in Australia (paragraphs 7.27-28).

3.2 The Committee consequently recommended 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 1 – paragraph 8.15);
- the fee applied under Migration Regulation 4.31B be raised to \$1400, which is in line with the fee levied for an application for a review by the Migration Review Tribunal (Recommendation 2 – paragraph 8.17); and
- additional resources be made available to the Refugee Review Tribunal to provide more expeditious hearing and finalisation of cases coming before it (Recommendation 3 – paragraph 8.19).

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

4. Majority Recommendations

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.

4.1 The Government has decided to implement Recommendation 1 in full. Regulations extending the sunset clause for a further two years were made with effect from 1 July 2003.

4.2 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 2005.

Recommendation 2

The Committee recommends that the fee applied under Migration Regulation 4.31B be raised to \$1400, which is in line with the fee levied for an application for a review by the Migration Review Tribunal.

4.3 The Government has decided to implement Recommendation 2 in full. Regulations increasing the fee to \$1400 were made with effect from 1 July 2003.

4.4 The fee increase will apply to all RRT applications for review lodged from 1 July 2003.

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.

4.5 The Government notes that the Committee's recommendation has been based on the RRT's performance in the 2001/02 financial year. In the last financial year (2002/03), that Tribunal's performance increased dramatically. It finalised 6251 cases (a 7% increase compared with the previous financial year's 5865 cases finalised), and had 3703 cases on hand at the end of the financial year (a 27% reduction compared with the number of cases on hand at the end of the previous financial year, 5077).

4.6 The median time taken to finalise a case also reduced last financial year compared to the 2001/02 financial year; from 54 weeks from lodgement to finalisation down to 49 weeks, for community cases, while detention cases remained the same as the previous financial year, at 10 weeks from lodgement to finalisation.

4.7 The improved performance was the result of increases in the numbers of tribunal members following several new member recruitment rounds in which the Government added 10 new members to the Tribunal in October 2001, and a further 7 new members in July 2002. A further 18 new members were appointed to the RRT in July 2003. There were 81 tribunal members at October 2003, compared to 63 as at 1 July 2002, and 55 as at 1 July 2001.

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 2003.

5.2 This report commented that:

- most submissions to the review opposed the fee;
- there is not convincing evidence that the fee has discouraged non bona fide asylum seekers from seeking RRT review;
- it is not appropriate to hold the threat of a fee (or fine) over some of our most vulnerable potential immigrants, particularly when there is doubt that it is achieving its purpose of deterring spurious appeals; and
- removing the fee would send a positive message to the Australian community that the Australian Government is committed to helping refugees and people who face serious abuses of their human rights.

5.3 The dissenting report concluded:

In 1999 and in 2001 no clear evidence was presented to this committee, which proved that the introduction of a fee for access to review contributed to a reduction of abuse of the PV process. Once again the overwhelming evidence is that the fee does not counter abuse of the system and imposes unnecessary strain on applicants. While I agree with recommendation No 3, that the Refugee Review Tribunal be given additional resources to carry out their duties expeditiously, I don't agree with the primary recommendations of the committee.

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 evidence of abuse of the PV process. 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 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 actual positive effect the fee has had as a deterrent and a partial cost recovery measure. The analysis and research on review applications and success rates provided to the Committee in the DIMIA submission 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 provided to the Committee to show that the fee dissuaded any genuine applicant from applying to the RRT for review of their primary decision.