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Imposition of the fee

8.1   Currently the fee is imposed after the RRT has decided not to set aside the DIMIA conclusion that the applicant did not warrant a PV.

Time of imposition

8.2   JMVS proposed that the fee should be paid up-front as a further deterrent, and refunded in the case of successful applications. [1] Similarly, MIA suggested that if its proposal for a bond was taken up, that it would be required at the time of application.[2]

8.3   LIV maintained that to have the fee payable at the time of application:

> would be a severe risk that this breaches further our international obligations…[because] to enforce an application fee at the initial application stage would be very detrimental to proper access to the justice system.[3]

8.4   When asked about up front fees, DIMIA's position was that it would place a:

> barrier in between the person and the appeal, because they must find the money before they can actually exercise the appeal. Under the current system, you can have your appeal

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1   JMVS, Submission No 4, para 6
2   MIA, Submission No 9, p. 2
3   LIV, Evidence, p. 30

and the only issue you have to consider is that you may have
a debt later if you are unsuccessful.[4]

Conclusion

8.5   The Committee was reluctant to require the fee prior to any decision
        because it considered that this would unnecessarily expand its
        deterrent effect. This could have a possible detriment to *bona fide*
        applicants which was not the case under the current arrangements.

Level of fee

8.6   The fee, when introduced in 1997, was set at $1,000.   Several
        submissions addressed the current level of the fee.

8.7   Three submissions to the Committee suggested that the fee should be
        increased.[5] JMVS proposed that the new fee be $2,000[6] and part of
        MIA's submission envisaged a fee of $3,000.[7]

8.8   DIMIA commented that, when the fee was introduced it was a:

        delicate balance between not putting barriers in the way of
        people applying for asylum and, in relation to the appeal
        process, sending a message to people who do not have any
        real case and want to use the appeal process as a way of
        staying in the country.[8]

8.9   DIMIA indicated that the Department of Finance and Administration
        provides the RRT with funding of $2,400 per application finalised,[9]
        and that it cost the Department approximately $120,000 to maintain
        the cost recovery process each year.[10] DIMIA commented that:

        the current level of the post review decision fee at $1000 is
        considered to be reasonable and appropriate. It represents a
        significant, but still only partial, contribution to the cost of

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4   DIMIA, Evidence, p. 59
5   G. Kimberley, (Submission No1, p. 1); JMVS, MIA.
6   JMVS, Submission No 3, p. 1
7   MIA, Submission No 9, p. 2
8   DIMIA, Evidence, p. 58
9   "Refugee Review Tribunal, *Annual Report 2001-2002*, p21. For the purposes of the
     Purchasing Agreement, one finalised case equates to 1.34 applications" quoted in DIMIA,
     Submission No 2, para 5.8.2
10   DIMIA, Evidence, p. 51

review decisions by people who are found not to be refugees. Importantly, the current level represents a significant cost of review still being borne by the taxpayer.[11]

8.10   The Committee was aware that $1,000 fee had remained unchanged for more than five years since being introduced in 1997. Its relative value had therefore declined, potentially eroding some of its deterrent effect. Some DIMIA fees are indexed[12] and had this fee been indexed it would have been in excess of $1,000 in 2003.[13] The Committee observed that at the Migration Review Tribunal the applicable fee was $1,400.[14]

Conclusion

8.11   The Committee was aware that most other submissions argued for the removal of the fee, rather than any increase.

8.12   The Committee believed that it was appropriate for the fee to be raised because part of its deterrent effect depended on its relative value being maintained.

Summary

8.13   The fee being considered by the Committee was imposed by Regulation 4.31B which, under a sunset clause provision, would cease to have effect on 1 July 2003

8.14   The Committee looked to the underlying rationale of the fee, which was to reduce acknowledged abuse of the PV system. In the absence of any evidence that *bona fide* applicants were deterred by the fee from pursuing an RRT review, and in the light of data which indicated that the fee was deterring non-genuine applications, the Committee concluded that the fee was probably serving its purpose and should remain, but with a further review.

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11 DIMIA, Submissions No 2, para 5.8.2.
12 DIMIA, Evidence, p. 59
13 ABS *Consumer Price Index Australia* shows the CPI in 2001/2 (latest full year data) was 136.0 compared with 1997/8 = 120.3. On this basis $1,000 in 1997 would be the equivalent of $1,130 in 2002. ABS *Average Weekly Earnings Australia* (seasonally adjusted, all persons full-time adult total) Aug 97 = $749.20; Aug 2002 = $919.90 $1000 = $1, 227 in 2002.
14 Migration Review Tribunal at: http://www.mrt.gov.au/forms/mrt10_march2003.pdf

Recommendation 1

8.15   **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.**

8.16   The Committee concluded that it was appropriate to increase the fee.

Recommendation 2

8.17   **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.**

8.18   In the broader context of the review process, the Committee concluded that a more expeditious RRT hearing process would both benefit bona fide applicants and also provide an additional disincentive to those using the system to prolong their stay in Australia. This, the Committee believed, could be achieved without threatening the integrity of the review process if more resources were available to the RRT.

Recommendation 3

8.19   **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.**