

Additional comments by Labor members¹

1.1 Australian Labor Party members (Labor members) of the Parliamentary Joint Committee on Human Rights (the committee) seek to make additional comments in relation to the Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020 [F2020L01416].

1.2 The instrument amends the Federal Court and Federal Circuit Court Amendment (Fees) Regulation 2012 to increase the application fee for migration matters in the Federal Circuit Court from \$690 to \$3,330, an increase of 483 per cent. The instrument also provides that where a Registrar or authorised court officer determines that payment of the full fee would cause financial hardship to a person, the person may instead pay a reduced fee, or in some cases may be exempt from paying any fee. The decision to reduce or waive fees would be at the discretion of the Federal Circuit Court Registrars and Authorised Officers.

1.3 Increasing the application fee for migration matters by 483 per cent may, in many cases, engage and limit the right to a fair hearing. Labor members note that the international human rights legal advice to the committee, in concluding whether the increase may limit the right of access to justice, said that much would depend on how the fee waiver is applied in practice and whether sufficient information is made available to applicants (in languages they understand) as to the availability of the waiver. If persons who seek a review of their migration decision in the Federal Circuit Court are not made aware of their ability to apply for a waiver of the court application fee (in a language which they understand), the magnitude of the application fee may itself have the effect of deterring them from seeking such a review, in particular for those applicants who are self-represented.

1.4 The most recent Annual Report of the Federal Circuit Court reported that 49 per cent of migration matters heard by the court were for protection visas. Of the remaining 51 per cent of migration matters, 48 per cent were for student visas.²

1.5 Labor members of the committee note that the Attorney-General advised that the increase in application fees for migration matters is expected to raise \$36.4 million which will be used to offset the cost of providing additional resourcing to the Federal Circuit Court. The Attorney-General noted that there is estimated to be an additional 1,000 migration matters per year and the additional funding will enable the court to finalise those matters as well as enhancing the court's capacity to resolve family law matters.

1 This section can be cited as Parliamentary Joint Committee on Human Rights, Additional comments by Labor members, *Report 1 of 2021*; [2021] AUPJCHR 14.

2 Federal Circuit Court of Australia, *Annual Report 2019-2020*, p. 40.

1.6 Labor members consider that it would be difficult to raise an additional \$36.4 million if most applicants are granted a waiver of fees. Furthermore, 79 per cent of migration applications filed in the Federal Circuit Court last year were filed by asylum seekers or international students. The waiver of fees is a discretion exercisable by Federal Circuit Court Registrars or Authorised Officers. The Attorney-General advised the committee that internal court guidelines would assist the making of that discretionary decision.

1.7 Labor members are very concerned that raising application fees for migration matters in the Federal Circuit Court by such an extraordinary amount will be a deterrent to applicants. The fee hike will prevent (in a real and practical sense), access to justice for those litigants.

1.8 In the last Annual Report of the Federal Circuit Court, the court summarised seven cases that were heard in the migration division of the court. Four of those applications were by asylum seekers seeking protection visas and their applications were upheld.³

1.9 One application summarised in the report was by a family of Iranian nationals whose protection visa had been cancelled by the minister. The Administrative Appeals Tribunal (AAT) had upheld the minister's decision. The court found that the AAT had not approached the matter correctly as the United Nations Convention on the Rights of the Child required the AAT to take into account the best interests of the children as a 'primary consideration'.⁴

1.10 The migration division of the Federal Circuit Court considers and determines important matters of law including people seeking asylum due to religious persecution. The decisions the court makes have life-changing consequences. In some circumstances a practical denial of access to this court could be fatal for the applicants.

1.11 Signalling that application fees in the migration division of the Federal Circuit Court are exceptionally costly will not promote access to justice. Labor members consider it will do the opposite.

Graham Perrett MP
Deputy Chair
Member for Moreton

Steve Georganas MP
Member for Adelaide

3 Federal Circuit Court of Australia, *Annual Report 2019-2020*, pp. 77-79.

4 *CFE16 v Minister for Immigration & Anor and CFD16 v Minister for Immigration & Anor* [2020] FCCA 1083

Senator Nita Green
Senator for Queensland

Senator Pat Dodson
Senator for Western Australia

