

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Attorney-General and Minister for Industrial Relations**

*Federal Court of Australia Act 1976*  
*Federal Circuit Court of Australia Act 1999*

*Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020*

This instrument increases the Federal Circuit Court application fees for migration litigants, and introduces a partial fee exemption which allows individuals to pay a reduced application fee where paying the full fee would cause financial hardship.

The *Federal Court of Australia Act 1976* (FCA Act) created the Federal Court of Australia, a superior court of record and a court of law and equity. The *Federal Circuit Court of Australia Act 1999* (the FCC Act) maintained in existence the Federal Magistrates Court created under Chapter III of the Constitution as the Federal Circuit Court of Australia.

Section 120 of the FCC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the FCC Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the FCC Act. Subsection 120(3) of the FCC Act provides the regulations may make provision for in relation to fees to be paid in respect of proceedings in the Federal Circuit Court.

Section 60 of the FCA Act provides that the Governor-General may make regulations prescribing matters required or permitted by the FCA Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the FCA Act. Subsection 60(1) of the FCA Act provides the regulations may prescribe fees to be paid in respect of proceedings in the Federal Court.

The *Federal Court and Federal Circuit Court Regulation 2012* (the Principal Regulations) prescribe fees for proceedings in the Federal Court and Federal Circuit Court.

The purpose of the Regulations is to amend the Principal Regulations to increase the application fees charged by the Federal Circuit Court for migration litigants. The increased fees are accompanied by a partial fee exemption provision, which allows individuals to pay a reduced fee where paying the full fee would cause financial hardship. The existing full fee exemption also continues to apply.

The amended fees only apply to migration litigants, and bring the Federal Circuit Court application fees in line with the Federal Circuit Court's placement in Australia's court hierarchy, relative to the application fees for the Administrative Appeals Tribunal and the application fees for the Federal Court of Australia.

The Regulations specify the Federal Circuit Court application fee for migration litigants is increased from \$690 to \$3,330, bringing the Federal Circuit Court application fees in line with the Federal Circuit Court's placement in Australia's court hierarchy. The application fees for the Administrative Appeals Tribunal currently being \$1,826 and the application fees for the Federal Court of Australia currently being \$4,840. Further, a partial fee exemption

allows individuals to pay a reduced fee, set at half of the amount of the full fee, where paying the full fee would cause financial hardship.

Details of the Regulations are set out in Attachment A.

Consultation was undertaken with the Federal Circuit Court of Australia, as the fees charged relate to the Federal Circuit Court of Australia, and the administration of fees, including reductions and exemptions, is currently and will continue to be undertaken by the Federal Circuit Court of Australia.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 January 2021.

A statement of Compatibility with Human Rights is at Attachment B.

**Details of the Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020**

**Section 1 - Name of Regulations**

This section provides that the title of the Regulations is the *Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020*.

**Section 2 - Commencement**

This section provides for the Regulations to commence on 1 January 2021.

**Section 3 - Authority**

This section provides that the *Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020* is made under the *Federal Circuit Court of Australia Act 1999* and *Federal Court of Australia Act 1976*.

**Section 4 - Schedule(s)**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 - Amendments**

**Item [1] - Division 2.3 (heading)**

The heading of Division 2.3 of the Principal Regulations is amended to ‘Reduced fees and exemption from liability to pay fees’.

**Item [2] - Paragraph 2.06(1)(a)**

Section 2.06 sets out a full fee exemption for certain fees mentioned in Schedule 1 of the Principal Regulations if, in the opinion of the Registrar or authorised officer, the payment of the fee would cause financial hardship to the individual. This item specifies that paragraph 2.06(1)(a) does not apply to the new fee in item 201A of Schedule 1 (see item 11 below). The effect of this provision is to provide that a reduced fee or fee exemption for new fee item 201A of Schedule 1 is to be considered under new section 2.06A.

**Item [3] - At the end of Division 2.3 Part 2**

This amendment adds section 2.06A into the Principal Regulations which introduces a partial fee exemption for Federal Circuit Court application fees for migration litigants. Notably, section 2.06A enables the Registrar to determine that an individual who is liable to pay the fee in item 201A of Schedule 1 (and if doing so would cause financial hardship); that the individual may instead pay the reduced fee, or if payment of the reduced fee would

cause financial hardship, the individual is exempt from paying both the full fee and the reduced fee. A decision made under section 2.06A is reviewable by the Administrative Appeals Tribunal.

#### **Item [4] Subsection 2.20(1)**

This amendment inserts a reference to item 201A after ‘124’ in subsection 2.20(1). Section 2.20 provides for the annual increase in fees mentioned in Schedule 1. The effect of this insertion is to specify that the fee amount in item 201A of Schedule 1 is not increased on 1 July 2019 and each following 1 July. This is necessary because item 5, below, inserts a new provision which relates specifically to the indexation of item 201A.

#### **Item [5] After subsection 2.20(1)**

This amendment inserts subsections 2.20(1A) and 2.20(1B). The effect of the insertion of subsection 2.20(1A) is to provide that the fee amount in item 201A of Schedule 1 is increased by indexation on 1 July 2021, and on each 1 July thereafter.

The effect of the insertion of subsection 2.20(1B) is to provide that subsections 2.20(2) and 2.20(3) apply to all fees mentioned in Schedule 1 apart from the fees mentioned in items 102 to 104, 107, 124, 202, 209, 210 and 220, and the reduced fee mentioned in item 201A. Subsections 2.20(2) and 2.20(3) provide for fee increases annually in accordance with upwards movement in the All Groups Consumer Price Index and rounding of those fee increases. Item 5 disapplies these subsections because the fees mentioned in items 102 to 104, 107, 124, 209, 210 and 220 are not subject to an annual fee increase, and increases to the reduced fee mentioned in item 201A are dealt with by subsections 2.20(3A) and 2.20(3B) inserted by item 6, below.

#### **Item [6] After subsection 2.20(3)**

This amendment inserts subsections 2.20(3A) and 2.20(3B). Subsection 2.20(3A) provides that the reduced fee mentioned in 201A of Schedule 1 is increased in accordance with subsection 2.20(3B) if the full fee mentioned in item 201A of Schedule 1 is increased and rounded under subsections 2.20(2) and 2.20(3). Subsection 2.20(3B) provides that the reduced fee is half the amount of the full fee (as increased and rounded under subsection 2.20(2) and 2.20(3), rounded down to the nearest multiple of 5.

#### **Item [7] After subsection 2.20(5)**

This amendment inserts a subheading, ‘Definitions’, above subsection 2.20(6).

#### **Item [8] - Paragraph 2.21(1)(a)**

This amendment inserts a reference to section 2.06A into existing section 2.21 of the Principal Regulations. Section 2.21 provides that a Registrar must provide notice of their decision and prescribes which decisions are reviewable by the Administrative Appeals Tribunal.

#### **Item [9] - In the appropriate position in Part 5**

This amendment inserts an application provision to provide that amendments made by this instrument apply in relation to the liability of a person to pay a filing fee for filing a document on or after 1 January 2021.

**Item [10] – Part 2 of Schedule 1 (table item 201, column headed ‘Document or service’, paragraph (a))**

This amendment inserts a reference in the table to item 201A. The effect of this insertion is to prescribe a new fee for the filing of a document by which a proceeding is commenced in the Federal Circuit Court seeking final orders in the exercise of the Court’s jurisdiction under section 476 of the *Migration Act 1958*, or in relation to a non-privative clause decision within the meaning of the *Migration Act 1958*.

**Item [11] – Part 2 of Schedule 1 (after table item 201)**

This amendment inserts item 201A into Part 2 of Schedule 1 to the Principal Regulations which prescribes an increased Federal Circuit Court application fee of \$3,330 for migration litigants, or a reduced fee of \$1,665 if determined by the Registrar under section 2.06A.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the *Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020* (the Regulations) is to increase the Federal Circuit Court application fee for migration litigants.

The amendments made by the Regulations do not change who is liable to pay a Federal Circuit Court application fee, but provide that those individuals who are migration litigants are to pay a higher fee. The increase fee is commensurate with the Federal Circuit Court's placement in Australia's court hierarchy. The increased fees are also accompanied by a partial fee exemption provision, which allows individuals to pay a reduced fee where paying the full fee would cause financial hardship. The existing full fee exemptions also continues to apply.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.