Australian Government
Department of Immigration and Citizenship

SECRETARY

// April 2013

Julie Dennett
Committee Secretary
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dennett

Inquiry into the impact of federal court fee increases since 2010 on access to justice in Australia

Thank you for your letter dated 5 March 2013 inviting the Department of Immigration and Citizenship to make a submission to the inquiry into the impact of federal court fee increases since 2010 on access to justice in Australia.

Prior to the commencement of the fee changes on 1 November 2010 clients in immigration detention, criminal custody or who were experiencing financial hardship could obtain exemptions from application fees in the Commonwealth Courts. Such exemptions are, however, no longer available. This means that immigration detainees are now required to pay a mandatory fee of $100 to make a valid application to the Courts.

From our perspective the compulsory $100 fee combined with the absence of a discretionary waiver seems to have unintended and harsh consequences for some clients.

Advocates have drawn our attention most particularly to cases involving visa refusal or cancellation on character grounds and in relation to irregular maritime arrivals.

Since the 2010 decision of the High Court in *Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia* it has been clear that assessments of protection obligations of irregular maritime arrivals are judicially reviewable. Irregular maritime arrivals are initially detained on Christmas Island or at other immigration detention centres that may be located in physically remote areas of Australia. The practical difficulties for clients in detention in remote locations who wish to make fee payments to Court registries are manifold, even where they have a legal professional acting on their behalf. These include lack of identity documents, a more or less total absence of credit cards or onshore bank accounts and, in most cases, negligible cash resources.

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Currently internal departmental data indicates that over 41% of the total irregular maritime arrival judicial review caseload have filed their application in Sydney. However, only 25% of the irregular maritime arrival judicial review caseload are in detention in Sydney. This may indicate that other parties are assisting these clients to pay or facilitate the payment of this fee. The Department is aware of several situations that have arisen where the $100 filing fee for clients in detention has been paid for the client by their legal representatives or by immigration advocacy organisations.

The Department acknowledges that one of the original policy rationales for the fee was to test the legitimacy of applications and minimise vexatious actions. However, successive governments have believed that many litigants in the migration context seek to prolong their stay in Australia through litigation. The payment of the fee would be unlikely to deter that conduct.

Yours sincerely

Martin Bowles, PSM