

NATIONAL FAMILY VIOLENCE PREVENTION LEGAL SERVICES

WORKING TO ACHIEVE IMPROVED JUSTICE OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER
VICTIMS/SURVIVORS OF FAMILY VIOLENCE AND SEXUAL ASSAULT

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

Impact of Federal Court Fee Increases since 2010 on Access to Justice in Australia

1. Introduction

The National Family Violence Prevention Legal Services Forum (the National Forum) thanks the Senate Standing on Legal and Constitutional Affairs for considering the important issue of access to federal court systems. We are concerned about the increasing costs of accessing justice in Australia and the corresponding lack of support for the legal assistance sector.

Aboriginal women already experience significant barriers to accessing justice. Increased fees in the Federal Magistrates and Family Courts, as well as reductions in access to legal aid and legal assistance are further disadvantaging our clients. However, the reintroduction of exemptions for people receiving Legal Aid assistance or with concession cards is very welcome.

2. About the National FVPLS Forum

The Australian Government through the Attorney-General's Department provides funding for the Family Violence Prevention Legal Services (FVPLSs). The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander¹ adults and children who are victims/survivors of family violence, including sexual assault/abuse. FVPLSs can also provide a law reform and advocacy function, community legal education and early intervention and prevention activities.

The National Forum was formally established in May 2012 and it has adopted a Charter setting out its objectives and procedures to guide its operation.

Members of the National Forum are those 14 organisations in receipt of Commonwealth funding to deliver Family Violence Prevention Legal Services in 31 rural and remote locations across Australia:

- Aboriginal Family Violence Prevention and Legal Service Victoria
- Central Australian Aboriginal Family Legal Unit (Alice Springs NT)
- Family Violence Legal Service Aboriginal Corporation (SA)
- Kempsey Family Violence Prevention Legal Service (NSW)

¹ Herein referred to as 'Aboriginal'.

- Marninwarnitkurra Family Violence Prevention Unit WA (Fitzroy Crossing)
- Maruma-Li Mari Outreach Service QLD (Roma)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council Domestic and Family Violence Service
- North Australian Aboriginal Family Violence Legal Service (Darwin)
- Queensland Indigenous Family Violence Legal Service
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany WA)
- Thiyama-li Family Violence Service Inc. NSW (Moree)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill NSW)
- Western Australia Family Violence Legal Service (Perth)
- Yoorana Gunya Family Violence Healing Centre Aboriginal Corporation (Binaal Billa FVPLS, Forbes NSW)

The National FVPLS Program was established in recognition of the gap in access to legal services for Aboriginal victims of family violence – predominantly Aboriginal women and children.

3. The impact of federal court fee increases on low income and working Australians:

The recent fee increases will have the greatest impact on people already experiencing barriers to accessing justice. The Family Law Council inquiry ‘Improving the Family Law System for Aboriginal and Torres Strait Islander Clients,’ reported that the family law system is underutilised by Aboriginal families and post-separation relationship problems are often left unaddressed until a point of crisis, perpetuating conflict and sometimes resulting in family violence. Aboriginal women already experience significant barriers to accessing justice, including discrimination, racism, poverty and geographic disadvantage. Higher filing fees and reduced access to fee waivers are increasing the barriers that Aboriginal women experience in accessing the court and legal systems.

The most concerning potential impact of fee increases is that clients may not be able to take their matters to court. Victims/survivors of family violence often have limited access to financial resources and are living on very low incomes. Economic abuse is very common in situations of family violence. An FVPLS Victoria lawyer recently noted that economic abuse was a feature of almost all her current family law cases where family violence was present. Perpetrators of family violence often seek to control their family members through refusing access to money, preventing women from seeking employment, accruing debts and failing to pay child support or bills. The trauma of experiencing family violence can also have long term impacts on women’s physical and mental wellbeing, making it more difficult to find and sustain long term employment and secure income.

As a result of these financial pressures and the increasing costs of going to court, clients may feel pressure to settle cases earlier, or accept unfavourable terms to avoid higher costs.

4. Whether these fee increases are reasonable and consistent with other justice policy matters

The recent increases must be viewed in the context of other pressures on the legal assistance sector. Community legal centres and legal assistance services are underfunded, and many are forced into a position of tightening eligibility or turning away clients. The FVPLS program has recently experienced cuts to early intervention and prevention services and difficulties securing long term funding and funding in urban areas. Few legal assistance services are in a position to financially support clients to meet increased fees.

Further, the impacts of recent tightening of eligibility for Legal Aid in family law matters, especially in Victoria, are impacting on clients. While our clients are exempt from paying federal court filing fees if they have been granted legal aid for the proceeding, the recent eligibility changes are impacting on the ability of clients to access this exemption. Numerous FVPLS Victoria clients who would previously have been eligible for Legal Aid assistance are no longer eligible under the new requirements and therefore not eligible for exemptions for filing fees, (unless they qualify for another exemption).

5. How increases in court fees can act as a barrier to accessing justice

a) Subpoenas

The introduction of filing fees for the issuing of subpoenas is of concern. While clients who are eligible for Legal Aid assistance are generally exempt from these fees, they are a substantial burden on clients required to self-fund their cases. The maximum of five subpoenas are normally issued in family violence cases to ensure that the evidence of family violence and abuse is before the court. This results in an additional cost of \$250 for the client. FVPLSs are finding that it is often our organisations that are being required to meet these costs out of already limited budgets.

There are also reports of Independent Children's Lawyers (ICL) being unable or reluctant to issue subpoenas, as the funding they receive from Legal Aid Commissions has not been increased to cover the new costs. To address the introduction of filing fees for the issuing of subpoenas, other Legal Aid Commissions must follow the example of NSW and include an increase in disbursement costs of \$250 for any new ICL matter to cover the issuing of subpoenas.

b) Divorce

The National Forum is unclear on the rationale behind excluding only divorce from the exemption to paying filing fees. From 1 January 2013 the reduced filing fee for a divorce, for people on low incomes or with a concession card is \$265. This is a significant increase of more than \$200 on the fee prior to 1 January.

The reduced amount must be put in the context of clients receiving Centrelink payments. A single parent with dependent children receives a maximum of \$342 per week, with this reducing significantly if the children are over eight years of age. Providing \$265 to file for divorce is extremely difficult for most people whose only income is Centrelink payments.

The impacts of the fee increases may include women delaying or being unable to apply for divorce. FVPLSs assist a relatively small number of divorce cases. However for those clients and the clients of similar services who are married and have experienced family violence divorce can be important, not only as a stepping stone on the recovery journey, but in ensuring the family's safety and formally ending the financial and legal relationship between the people involved.

6. Impact on Legal Assistance Services

As eligibility for Legal Aid services has tightened, more FVPLS clients now have to self-fund their legal cases, as they are no longer eligible for Legal Aid. The costs of disbursements including filing fees must be met by either the client themselves or the service that represents them. FVPLSs have not been provided with any additional funding to meet this extra demand and have very limited capacity to cover these costs.

Disbursements such as consent orders (\$145) and subpoenas (\$50) can quickly add up to significant costs for clients. As well as putting pressure on the clients, the National Forum is concerned about the pressure on legal services and lawyers. FVPLS lawyers report a reluctance to impose high filing fee costs on clients they know are ill-equipped to pay.

FVPLSs are finding themselves regularly in the position of having to chase clients for money to cover the costs of filing fees and other disbursements. Not only is this an ineffective use of limited staff resources, it is not encouraging Aboriginal clients to remain engaged with the legal system.

7. The degree to which the fee changes reflect the capacity of different types of litigants to pay

The reintroduction of exemptions for people with concession cards or who receive Legal Aid assistance is very welcome and has had a positive impact on the majority of FVPLSs clients nationally.

Under the system prior to 1 January 2013, clients with concession cards or receiving Legal Aid assistance were eligible for a reduced filing fee of a flat rate of \$60. For many this cost was high enough to prevent them from being able to take their matter to court. Generally, FVPLSs covered this cost for clients to remove one of the barriers to accessing the legal system.

This cost was a substantial burden for FVPLSs, which already operate on a limited budget. As well as improving access to justice for Aboriginal clients, the reintroduction of the exemption system is welcomed by FVPLSs, allowing services to redirect these funds to existing or potential clients.

The National Forum strongly supports the retention of the full exemption for clients on low incomes and the extension of this exemption to applications for divorce.