



16 April 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

KINGSFORD

LEGAL CENTRE

via email: legcon.sen@aph.gov.au

Dear Madam/Sir,

IMPACT OF FEDERAL COURT FEE INCREASES SINCE 2010 ON ACCESS TO JUSTICE IN AUSTRALIA

The Kingsford Legal Centre (KLC) thanks you for the opportunity to make submissions to the review of the federal court fee changes. Our feedback is drawn from the experiences of our clients and staff on this subject.

KLC is a community legal centre that provides advice and casework on a wide range of legal matters to people living, working or studying in the Botany and Randwick local government areas. We also provide a specialist discrimination law advice and representation service throughout New South Wales. We actively participate in law reform and policy projects as well as community legal education.

National Association of Community Legal Centres

KLC is a member organisation of the National Association of Community Legal Centres (NACLC). We endorse the comments made by NACLC to the Attorney-General's Department in its submission dated 8 July 2011.

Summary

We do not support the recent increase of federal court fees.

For low-income people, including the many clients we see whose income comes from social security payments, court fees are an impediment to access of justice. The increase of the court fees in 2013, while it may appear justified from a budgetary perspective¹, impedes access to the justice system for those with financial difficulties.

¹Moira Coombs, *Budget Review 2012-13: Court Reforms*, (May 2012) Parliament of Australia <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201213/CourtReforms#_ftn12>.

We acknowledge that the Department's reasoning behind the fee increase is to charge fees for litigants who are able to pay, such as businesses, while allowing for fee waivers for individuals facing financial hardship. However the increase in fees has been substantial, with fees being increased by up to 20% this year². Many middle-income earners who are not entitled to fee waivers will be forced to pay these increased fees to access the Court system, and they will mean that a specific class of middle-income court users are unable to protect their interests.³

Increased court fees should not limit access to justice for low income people.

Divorce applications

While fee waivers have been re-introduced for most court applications, they have not been extended to divorce applications. This means that low income earners must now pay a minimum of \$265 to apply for a divorce. This is an entire week's income for someone on Newstart Allowance. The mandatory fee will also apply to women in abusive relationships who are seeking to escape the abuse, including getting a divorce. Applying to the Family Court is a necessary step for these women and alternative dispute resolution ('ADR') is not a real option. As stated by Community Law Australia in their September 2012 press release, community legal centres help these women and acknowledges that divorce is an important component for their recovery process.⁴ Increased fees are a financial and psychological burden on women in these situations.

Some community members have been forced into difficult financial situations, such as having to set aside \$5 each week in order to pay for the divorce application form.⁵ At KLC we assist many women who have escaped violent relationships. Many of these women live in debt and use all of their income support payments just to pay for essential expenses. Saving even a modest amount such as \$265 to apply for a divorce is out of reach for many of them.

² Nicola Berkovic, 'Federal Court costs have skyrocketed to \$16,000 a day', *The Australian*, 15 February 2013 <<http://www.theaustralian.com.au/business/legal-affairs/federal-court-costs-have-skyrocketed-to-16000-a-day/story-e6frg97x-1226578237423>>.

³ C Merritt, 'For middle Australia, access to justice is fast becoming a pipedream', *The Australian*, 11 May 2012 <<http://www.theaustralian.com.au/business/legal-affairs/for-middle-australia-access-to-justice-is-fast-becoming-a-pipedream/story-e6frg97x-1226352453885>>.

⁴ Community Law Australia, *Federal Court Fee Waivers For Disadvantaged Welcomed*, (12 September 2012) <<http://www.probonoaustralia.com.au/news/2012/09/federal-court-fee-waivers-disadvantaged-welcomed#>>.

⁵ Renee Viellaris, *Hike in divorce charges hit unhappy couples hard*, (2 April 2013) *The Courier-Mail* <<http://www.couriermail.com.au/news/queensland/hike-in-divorce-charges-hit-unhappy-couples-hard/story-e6freoof-1226610457453>>.

Alternative Dispute Resolution

The Budget Paper No. 2 states that the increase in the court fees is to encourage court users to seek “alternative dispute processes”.⁶ Overall, we support the use of alternative dispute resolution processes and consider that they are often the better course of action for many of our clients. This argument does not apply to situations where a court is really the only option for resolving a legal issue, such as in divorce applications.

The Government argues through the Budget Paper that the main incentive behind the court fee increases was to indicate to the Australian Community that, in the words of former federal Attorney-General Nicola Roxon, “access to justice extends beyond the courts”. In our experience, however, ADR may not always be the best way to resolve a dispute and removing the disputing parties’ ability to choose their means of resolution by forcing low income earners into ADR is a breach of their fundamental right of access to justice.

KLC frequently advises clients who have attempted to resolve their legal matters through ADR while unrepresented. Many of the clients we see are settling their disputes for inadequate amounts during conciliation and mediation processes because the other party has legal representation and they do not. This occurs in a range of jurisdictions, many of them federal jurisdictions such as in discrimination complaints. While ADR processes may be less formal than Court proceedings, they do not resolve the imbalance of power that exists when one party is unrepresented. Using high court fees to force litigants to resolve their issues through ADR will not achieve a just outcome for unrepresented litigants. Community legal centres like KLC do not have the resources to represent everyone who approaches us for assistance, so unless our funding is considerably increased, this will continue to be the case.

Conclusion

The increase in courts fees is a real concern for people who fail to meet the fee waiver criteria and who cannot afford fees for which there are no waiver provisions, such as for divorce applications. The steep increase in fees this year appears to have been implemented as a means to raise revenue without acknowledging the importance of access to justice for the Australian community. As expressed by Community Law Australia: “ordinary Australians are being excluded from the courts because they cannot afford legal services and court fees”⁷. This is forcing Australians into alternative dispute resolution that may fail to resolve disputes, especially where one party is unrepresented and the other has legal representation.

⁶ Moira Coombs, *Budget Review 2012-13: Court Reforms*, (May 2012) Parliament of Australia <http://www.budget.gov.au/2012-13/content/bp2/html/bp2_revenue-03.htm>.

⁷ Community Law Australia, *Federal Court Fee Waivers For Disadvantaged Welcomed*, (12 September 2012) <<http://www.probonoaustralia.com.au/news/2012/09/federal-court-fee-waivers-disadvantaged-welcomed#>>.

KLC submits that the fees should be reassessed to better account for community needs. The amount of revenue that can be raised through the federal courts should be a secondary consideration to access to justice.

Please feel free to contact us should you have any questions about this submission.

Yours faithfully,
KINGSFORD LEGAL CENTRE

Dianné Anagnos
Acting Principal Solicitor

Michael Panagiotopoulos
Student Law Clerk