



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

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## **About the Hunter Community Legal Centre**

The Hunter Community Legal Centre (HCLC) was established in 1991. The HCLC is an independent, not for profit, community legal centre funded by the State and Federal Attorneys General Departments and the Public Purpose Fund.

The HCLC provides free legal advice and representation to disadvantaged people who live, work or study in the Newcastle, Lake Macquarie, Hunter Valley, Port Stephens and Great Lakes regions.

The HCLC's Family Law Program (FLP) provides a free duty solicitor service for unrepresented parties in the Newcastle Family Court and Federal Magistrates Court. The FLP also provides free legal advice by appointment in separation, divorce and parenting matters, to people who meet the FLP criteria for assistance. The HCLC also provides free legal advice to parents undertaking family dispute resolution at the Newcastle and Taree Family Relationship Centres.

The HCLC auspices the Hunter Children's Court Assistance Scheme (HCCAS) which provides support to young people and their families who are attending the Children's Court in the Hunter Region.

The HCLC provides a Community Legal Education (CLE) program for community groups and community sector workers on a range of legal matters. The HCLC also engages in law reform projects to address inequalities in the legal system which are relevant to the needs of our clients.

### **Submission:**

This submission is made in response to an invitation from the Senate Standing Committee on Legal and Constitutional Affairs for submissions on the impact of federal court fee increases since 2010 on access to justice in Australia.

This submission will address the following issues:

- impact of federal court fee increases on low-income and ordinary Australians;
- how increases in court fees can act as a barrier to accessing justice; and
- the degree to which the fee changes reflect the capacity of different types of litigants to pay.

### **Case Study:**

Jake\* was subjected to racial vilification at work by his supervisor. Jake's supervisor told offensive stories, made derogatory jokes and sent emails to staff containing videos that contained racially offensive material.

The HCLC assisted Jake in lodging a complaint with the Australian Human Rights Commission (AHRC) against his supervisor and employer. However, the AHRC terminated Jake's complaint after his employer indicated that they would not participate in conciliation.

The HCLC advised Jake that he had a strong case but if he wished to pursue the matter further he would need to commence proceedings in the Federal Court. Due to Jake's personal circumstances he could not afford to pay the necessary fee in the Federal Court and was unable to take the matter further.

**Comment:**

Jake's situation clearly highlights the impact of Federal Court fees on low-income and ordinary Australians. Jake was unable to pursue his complaint as he was unable to afford the fee in the Federal Court which acted as a barrier to Jake being able to access justice.

It is our submission that the increases in Federal Court fees only increase the barriers to justice which our clients experience.

The increase in fees in family law matters in the Federal Magistrates Court since 1 January 2013 has had a significant impact on the ability of vulnerable and disadvantaged persons to access justice.

Prior to 1 January 2013, the fee for an application for divorce where the applicant was suffering from financial hardship was \$60.00. This fee is now \$265.00. This is a significant increase of over 400% and in our submission acts as a significant barrier to vulnerable and disadvantaged persons being able to access justice.

**Hypothetical Example:**

As a hypothetical example a client referred by a women's refuge to the HCLC FLP for assistance in completing an application for divorce. The client instructs the solicitor that her marriage broke down due to domestic violence and that since her separation she has been living with friends or in refuge's and is in receipt of the Newstart Allowance from Centrelink. The solicitor may assist the client in completing the application for divorce and would advise the client that the fee payable will be \$265.00. It is unlikely in this situation that the client would be able to afford to pay the fee.

**Comment:**

It is our submission the fee increase on an application for divorce places a significant burden on vulnerable and disadvantaged persons from being able to file an application for divorce. In the hypothetical example above this is particularly relevant where the applicant is the victim of domestic violence and wishes to formally end the marriage but is unable to do so due because she cannot afford the fee to file the application for divorce.

Similarly, prior to 1 January 2013 there was no fee for issuing a subpoena in the Federal Magistrates Court or Family Court. The effect of this was that it allowed persons who would otherwise be unable to afford to issue a subpoena the ability to do so. From 1 January 2013 there is now a fee of \$50.00 per subpoena. The result of this is that unless the person is able to meet the guidelines for an exemption of court fees they will face a significant burden on being able to present all the evidence relevant to their matter.

An issue that has been identified by the HCLC duty solicitors in the Newcastle Family Court and Federal Magistrates Court is the requirement from 1 January 2013 that a separate fee is payable on an Initiating Application and on an Interim Application. Prior to 1 January 2013 an applicant only paid one fee when an Initiating Application and Interim Application were filed together.

**Hypothetical Example:**

A client who is referred by the Registrar of the Federal Magistrates Court to the HCLC duty solicitor is extremely distressed and informs the solicitor that their former partner has taken the children and is refusing to return them. There are no existing parenting orders and there are no current proceedings in the Federal Magistrates Court. The solicitor advises the client that they will need to file an urgent initiating application and interim application. The client informs the solicitor that although in employment they are unable to pay the relevant fees at that time. The solicitor assists the client to complete an application for exemption from fees on the grounds of financial hardship which is subsequently refused.

**Comment:**

The requirement that an applicant pay multiple fees for both initiating applications and interim applications has created a barrier to accessing justice.

It is our submission that the fee increases do not reflect the capacity of different types of litigants to pay. In particular the fee changes do not take into account the capacity of vulnerable and disadvantaged persons to pay. This is particularly reflected in the significant increase in the fee for an application for divorce of over 400% for persons suffering from financial hardship.

\*Names have been changed in order to protect the identity of HCLC clients.