HUNTER COMMUNITY
LEGAL CENTRE INC.

Level 2 /116 Hunter Street NEWCASTLE 2300
ABN: 48822187862

Response to Senate Inquiry Into the
Impact of the Increase in Federal Court Fees on Access to Justice

Issue - Filing Fee Exemptions for CLC Clients

The Hunter Community Legal Centre (HCLC) is a 'legal aid scheme or service' approved by the Federal Attorney-General with respect to the following federal regulations:

1. Family Law (Fee) Regulation 2012
2. Federal Magistrates and Federal Court Regulations 2012
3. High Court of Australia (Fees) Regulations 2012

This approval means that clients of the HCLC as well as other approved Community Legal Centres ("CLCs") are eligible for an exemption from, or reduction in the relevant filing fees set out in the above Regulations. The experience of the HCLC relates to process of fee exemption within the Family Law Courts and our submission is therefore limited to this jurisdiction.

Legislative History

This table summarises the history of the regulations governing fee exemptions for the Family Law Courts and the impact of those regulations on CLC clients' eligibility for exemption.

Before November 2010	Family Law Courts offer an exemption from court fees. As an approved scheme, the Hunter Community Legal Centre provided eligible clients with a 'Notice of Exemption') signed by the advising solicitor. [SEE ANNEXURE A] This Notice was attached to the Relevant Family Law Courts Form (01/07/06V1). [SEE ANNEXURE B]
November 2010 to January 2013	The exemption from court fees is abolished and a reduction of court fees is introduced. Eligible clients of the HCLC are able to obtain a reduction in the applicable court fee in the same manner as above. The relevant court form (011110V1) for a reduction is attached as ANNEXURE C..
January 2013 to Present	The exemption from court fees is reinstated. The current relevant court forms (eg 0313V1) to apply for this exemption no longer provides an option for seeking exemption through having "received a 'Notice of Exemption' from an approved Community Legal Centre". [SEE ANNUXURE D]

The removal of the option to rely upon a 'Notice of Exemption' on the latest form makes it uncertain as to whether CLC clients are still eligible for an exemption from Family Law Court fees.

Relevant Regulations

Regulation 2.04 of the *Family Law (Fees) Regulation 2012* and 2.05 of the *Federal Court and Federal Magistrates Court Regulation 2012* ("the regulations") provide that:

> Persons exempt from paying fee—general
>
> (1) A person is exempt from paying a fee … if, at the time the fee is payable, one or more of the following apply:
>
> (a) the person **has been granted legal aid** under a legal aid scheme or service;
> (i) established under a law of the Commonwealth or of a State or Territory; or
> (ii) **approved by the Attorney-General;**
>
> for the proceeding for which the fee would otherwise be payable.

At least two meanings may arise from the wording, *'has been granted legal aid'*.

A. A person is exempt from paying the fee if they have received a formal grant of Legal Aid under a legal aid scheme or service...

   This group would be limited to those individuals who are represented or otherwise assisted by a lawyer employed by Legal Aid NSW, or by a private lawyer who is being paid by Legal Aid NSW.

This will be referred to as the narrow interpretation.

OR

B. A person is exempt from paying the fee if they have received legal assistance under a legal aid scheme or service...

   This group would include individuals receiving legal assistance either through a formal grant of Legal Aid or from any schemes other services approved by the Attorney-General in the *Legal Aid Schemes and Services Approval 2013*.

This will be referred to as the broad interpretation.

Reasons for Uncertainty

The HCLC's primary reasons for thinking that the exemption may only be available to clients of Legal Aid are:

1. **The Exemption Form**
   a. The current "Application for Exemption from Fees – General" form (0313V1) for the Family Law Courts has a section headed "Reason for Seeking Exemption".
   b. There is no mention of Community Legal Centres in this section. There is no reference at all on this form to legal schemes or services approved by the Attorney-General.
   c. There is an option to select: "I am in receipt of Legal Aid". When capitalised in this way "Legal Aid" is generally taken to refer to the institution - Legal Aid NSW.

2. **Phrasing of the Regulations**
   a. The ambiguity of the wording of "has been granted legal aid" in the regulations can be taken as a reference to the formal grant system offered by Legal Aid NSW.

3. **Obiter in Redden & Mayes**
   a. In *Redden & Mayes & Anor* [2013] FMCAfam 272, Lindsay FM suggested at 34, that an Independent Children's Lawyer ("ICL") would be eligible for an exemption 'only provided that they have been granted legal aid".
   b. This has led some practitioners to believe that an individual's eligibility for an exemption is conditional on their receiving a *grant* of Legal Aid.

4. **CLC Clients Refused Exemption**
   a. The HCLC has received reports that clients have been refused an exemption from the payment of Family Law Court fees based on a 'Notice of Exemption ' from a CLC.

<u>Support for the Broad Interpretation</u>

The HCLC prefers the broad interpretation for the following reasons:

1. **Legislative History**
   The substantive text of the regulations creating an exemption for people receiving legal assistance *has not changed* since before November 2010 when CLC clients were routinely granted exemption from Family Law Court fees. They should therefore remain eligible.

2. **Information on Court Websites**
   The information currently available on the Family Law Courts' website indicates that individuals who have received a 'Notice of Exemption' from an approved Community Legal Centre *are* eligible for an exemption or reduction in fees.

3. **Attorney-General's Approval**
   a. The HCLC is included in the Attorney-General's list of approved "Legal Aid Schemes and Services."
   b. The Attorney-General's list uses the same language that appears in Regulation 2.04 of the *Family Law (Fees) Regulation 2012* and 2.05 of the *Federal Court and Federal Magistrates Court Regulation 2012*.
   c. This suggests that the Attorney-General intended that the exemption apply to clients of each of the organizations included in the approved list.
   d. It suggests that the Attorney-General interprets the phrase "legal aid" to mean general legal assistance, rather than assistance provided by Legal Aid NSW.

4. **Westall & Varlia**
   The recent case of *Westall & Varlia* [2013] FMCAFam 353 (11 April 2013) supports a broad reading of the "legal aid" to include a broad range of legal assistance, rather than only assistance provided by Legal Aid NSW.

   In this case, Whelan FM held, at [15], that an ICL *was* a person who 'has been granted legal aid under a legal aid scheme or service' within the meaning of regulation 2.04(1)(a)(i). The ICL had received no formal grant from Legal Aid NSW. It was sufficient that the ICL scheme had been 'established under a law of the Commonwealth' as provided for in subsection (i). Whelan FM noted, at [24], that this

broad interpretation of the regulation supported the policy goal of ensuring that the courts are not 'denied access to the best evidence because of the cost of producing such evidence.'

RECOMMENDATIONS

If the broad interpretation is correct, then CLC clients should be eligible for an exemption from paying court fees.

A. Changes to the Form

The HCLC submits that the current ambiguity could be removed by **modifying the current form** entitled 'Application for Exemption from Fees – General' in the following ways:

1. Including a reference to CLCs in the list of dot points under the heading "Use this form if:" This could be done by changing the second dot-point to say:
   - *you are receiving Legal Aid*
   - *you have a "Notice of Exemption" from an approved Community Legal Centre*
   - *you are receiving assistance from a legal scheme or service approved by the Attorney-General or established under a law of the Commonwealth or of a State or Territory.*
   - *you are receiving Youth Allowance, Austudy or Abstudy payments*

2. Adding two new check-boxes in the section titled "Reason for Seeking Exemption" which could be labelled:

   "I have received a 'Notice of Exemption' from an approved Community Legal Centre"; and

   "I am receiving legal assistance a legal scheme or service approved by the Attorney-General or established under the law of the Commonwealth, or of a State or Territory"

B. Changes to the Regulations

The HCLC would also welcome an amendment to the regulations themselves, which removed the apparent reference the Legal Aid grants.

The HCLC submits the following phrasing as a replacement for the current text in regulation 2.04 of the *Family Law (Fees) Regulation 2012* and 2.05 of the *Federal Court and Federal Magistrates Court Regulation 2012*:

(a) the person **has received legal assistance from a** legal aid scheme or service; (i) established under a law of the Commonwealth or of a State or Territory; or (ii) approved by the Attorney-General;

ANNEXURE A

PRE NOV/2010 LETTER.

HUNTER COMMUNITY LEGAL CENTRE INC.

LEVEL 2, 164 HUNTER STREET
NEWCASTLE NSW 2300
ABN: 48 822 187 862

PO Box 84
Newcastle NSW 2300
Admin: (02) 4040 9121
Advice: (02) 4040 9120
Fax: (02) 4929 7996

NOTICE OF EXEMPTION
PAYMENT OF COURT FEES – FAMILY LAW COURTS

APPLICANT'S FULL NAME:

COURT FILE NO. (if applicable): n/a.....

The above applicant is a client of the Hunter Community Legal Centre Inc in relation to:
An initiating application to be filed and served by the mother for parenting orders

This client has been assessed by this community legal centre and has met the agreed eligibility requirements. I hereby give authorisation to exempt the client from incurring filing/hearing fees in line with the Government Notices Gazette of 10 January 2007 – Approval of legal aid schemes and services.

The client has been made aware that the exemption is only valid for the fee for which they seek an exemption

.....
Name of Authorised Person

.....
Signature of Authorised Person

9 June 2010
.....
Date of Authorisation

ANNEXURE B

FAMILY LAW COURTS

Application -

Exemption form
Payment of court fees

Family Law Regulation 11(7)(c)(d)
Federal Magistrates Regulation 2000, Regulation 8

Give details	
File Number	
File name	
Date filed	

Cross boxes where applicable

Notice to applicant

Use this form if:

- you hold a Health Care Card, Health Benefit Card, Pensioner Concession Card, Commonwealth Seniors Health Card or any other card issued by Centrelink or the Department of Veterans' Affairs that entitles you to Commonwealth health concessions, or
- you are receiving Legal Aid, Youth allowance or Austudy payment or Abstudy, or
- you have received a 'Notice of Exemption' from an approved Community Legal Centre
- you are a child under 18, or
- you are an inmate of a prison or otherwise legally detained in a public institution

When returning your completed application form to the registry you will need to attach photocopies of documentary evidence of any of the above (such as your Health Care Card or Legal Aid letter) to support your claim. Photocopy both sides of the card or other document.

If you do not qualify for any of the above, you may be able to apply for a fee to be waived on the basis of financial hardship. Ask registry staff for the appropriate form and guidelines.

An exemption is valid only for the fee for which you seek an exemption. If a further fee is payable you will need to reapply.

Details

1 Name and address

family name (surname) | given names

postcode | telephone

2 Fee for which exemption is sought

Family Court:
Form: Application ☐ Response ☐ Hearing fee ☐

Federal Magistrates Court:
Form: Application ☐ (including divorce) Response ☐ Hearing fee ☐

Appeal: to Full Court ☐ from court of summary jurisdiction ☐

3 Reason for seeking exemption

I currently receive the following means-tested pension or other benefit:

- Health Care Card ☐
- Health Benefit Card ☐
- Pensioner Concession Card ☐
- Commonwealth Seniors Health Card ☐
- Any other card issued by the Centrelink or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions ☐
- Youth allowance or Austudy payment ☒
- Abstudy benefits ☐

Or

I am in receipt of Legal Aid ☐
I have received a 'Notice of Exemption' from an approved Community Legal Centre ☐
I am a child under 18 years ☐
I am an inmate of a prison or otherwise lawfully detained in a public institution ☐

Signature

person in 1 ☒ **or** lawyer who prepared this application for person in 1 ☐ *print lawyer's name:*

name of lawyer who prepared this application for person in 1

Court use only

Copy of relevant documents attached ☐ **Exemption granted** ☐ **Exemption refused** ☐ **Exempt** ☐ **Legal Aid** ☐

Signature of officer **Date** / /

ANNEXURE C

FAMILY LAW COURTS

Application – Reduction of Payment of court fees – general

Family Law Regulation 11A,11C
Federal Magistrates Regulations 2000, Regulation 8D

Give Details	
File Number	
File name	
Date filed	

Cross boxes where applicable

Notice to applicant

Use this form if:

- you are the primary cardholder of a Health Care Card, Health Benefit Card, Pensioner Concession Card, Commonwealth Seniors Health Card or any other card issued by Centrelink or the Department of Veterans' Affairs that entitles you to Commonwealth health concessions (does not include a dependant of the primary cardholder), or
- you are receiving Legal Aid, Youth allowance or Austudy payment or Abstudy, or
- you have received a 'Notice of Reduction' from an approved Community Legal Centre, or
- you are a child under 18, or
- you are an inmate of a prison or otherwise legally detained in a public institution.
- your circumstances have changed since you paid your court fees and you now qualify under one of the above categories *(Note you may be eligible for a refund of fee previously paid)*

When returning your completed application form to the registry you will need to attach photocopies of documentary evidence of any of the above (such as your Health Care Card or Legal Aid letter) to support your claim. Photocopy both sides of the card or other document.

If you do not qualify for any of the above, you may be able to apply for a fee to be reduced on the basis of financial hardship. Ask registry staff for the appropriate form and guidelines.

A fee of $60.00 is payable at time of lodgment. If your application for a reduced fee is unsuccessful, you will need to pay the rem amount of the fee before your forms will be accepted.

Please note: It is your responsibility to inform the registry should your circumstances change.

Please note: The regulations provide that the filing fee for Consent Orders cannot be reduced.

Details

1 Name and address

family name (surname) | given names

postcode | telephone

2 Fee for which reduction is sought

Family Court ☐ **Federal Magistrates Court** ☒

Form: Application (including divorce) ☒ Response ☐ Setting-down Fee ☐

Hearing Fee ☐ Other

Appeal: to Full Court ☐ from court of summary jurisdiction ☐

3 Reason for seeking reduction

I currently receive the following means-tested pension or other benefit:

☐ Health Care Card
☐ Pensioner Concession Card
☐ Commonwealth Seniors Health Card
☐ Any other card issued by the Centrelink or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions
☐ Youth allowance or Austudy payment
☐ Abstudy benefits

Or

☐ I am in receipt of Legal Aid
☐ I have received a 'Notice of Reduction' from an approved Community Legal Centre
☐ I am a child under 18 years
☐ I am an inmate of a prison or otherwise lawfully detained in a public institution

Signature

☐ Person in 1 or ☐ lawyer who prepared this application for person in 1 (*print lawyers name)*

Name of lawyer who prepared this application for person in 1

Court use only

☐ **Copy of relevant documents attached** ☐ **Reduction granted** ☐ **Reduction refused** ☐ **Reduced Fee** ☐ **Legal Aid**

Signature of officer Name of officer **Date** / /

ANNEXURE D

FAMILY COURT OF AUSTRALIA
FEDERAL CIRCUIT COURT OF AUSTRALIA

Application for exemption from fees – general

(not to be used for divorce)

Family Law (Fees) 2012 Section 2.04

Give Details	
File number	
File name	
Date filed	

Notice to applicant

Use this form if:

- you are the primary cardholder of a Health Care Card, Health Benefit Card, Pensioner Concession Card, Commonwealth Seniors Health Card or any other card issued by Centrelink or the Department of Veterans' Affairs that entitles you to Commonwealth health concessions (does not include a dependant of the primary cardholder),
- you are receiving Legal Aid, Youth allowance or Austudy payment or Abstudy,
- you are aged 18 or under, or
- you are an inmate of a prison or otherwise legally detained in a public institution.

When returning your completed application form to the registry you will need to attach photocopies of documentary evidence of any of the above (such as your Health Care Card or Legal Aid letter) to support your claim. Photocopy both sides of the card or other document.

If you do not qualify for any of the above, you may be able to apply for a fee exemption on the basis of financial hardship. Ask registry staff for the appropriate form and guidelines.

If your application for exemption is unsuccessful, you will be required to pay the full filing fee before your forms will be accepted.

Warning: Under the Criminal Code any person who knowingly makes an untrue representation or statement to obtain a benefit or advantage from the Commonwealth is guilty of an offence and, if found guilty, can be fined or imprisoned.

Note: Where there is more than one applicant to an application, all applicants must meet the requirements for an exemption or the full fee applies.

Fee exemptions and reductions only apply to court fees.

GST does not apply to court fees.

Details	Cross boxes where applicable		
Name and address	family name (surname)		given names
			Postcode Telephone
Fee for which reduction is sought	☐ Family Court **Form:** ☐ Application (Not including divorce) ☐ Response	☐ Setting-down Fee ☐ Hearing Fee ☐ Interim application ☐ Subpoena ☐ Conciliation conference ☐ Consent orders (FCoA only) ☐ Initiating application (parenting & financial) VII & VIII orders Other	☐ Federal Circuit Court **Appeal:** ☐ to Full Court

Reason for seeking exemption	I currently receive the following means-tested pension or other benefit: ☐ Health Care Card ☐ Pensioner Concession Card ☐ Commonwealth Seniors Health Card ☐ Any other card issued by the Centrelink or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions ☐ Youth allowance or Austudy payment ☐ Abstudy benefits **Or** ☐ I am in receipt of Legal Aid ☐ I am a child under 18 years ☐ I am an inmate of a prison or otherwise lawfully detained in a public institution

Signature

☐ Person in 1 **or** ☐ lawyer who prepared this application for person in 1 (*print lawyers name)*

Name of lawyer who prepared this application for person in 1

COURT USE ONLY

☐ Copy of relevant documents attached ☐ Exemption granted ☐ Exemption refused

Signature of officer Name of officer **Date** ____/____/____

Federal Court of Australia
Federal Circuit Court of Australia

Application for Exemption from Paying Court Fees - General

Federal Court and Federal Circuit Court Regulation 2012
Section 2.05

Give Details
File Number:
File name:
Date filed:

Cross boxes, for example ☒, where applicable

Notice to applicant

Use this form if:

- you are receiving legal aid for your proceeding in the Federal Court or the Federal Circuit Court; or
- you are the primary cardholder of a Health Care Card, Pensioner Concession Card, Commonwealth Seniors Health Card or any other card that entitles you to Commonwealth health concessions (this does **not** extend to a dependant of the primary cardholder), or
- you are an inmate of a prison or otherwise detained in a public institution, or
- you are younger than 18, or
- you are receiving youth allowance or Austudy payments or Abstudy benefits, or
- you have been granted assistance under Part 11 of the *Native Title Act 1993* for your proceeding in the Federal Court.

When returning your completed application form to the registry you will need to attach photocopies of documentary evidence of any of the above (such as your Health Care Card, Legal Aid letter or Native Title funding letter) to support your claim. Photocopy both sides of the card or other document if it has writing on both sides. If more supporting information is required the Registry will contact you.

If you do not qualify for any of the above, you may be able to apply for individual fees to be exempted on the basis of financial hardship. Ask registry staff for the appropriate form and guidelines.

You must notify the Court Registry if there is any change to your circumstances that alter the information given in this application while the Court is dealing with your case.

WARNING

Under the Criminal Code any person who knowingly makes an untrue representation or statement to obtain a benefit or advantage from the Commonwealth is guilty of an offence and, if found guilty, can be fined or imprisoned.

Details

1 Name and address

family name (surname) | given names

postcode | tel

2 Court in which exemption is sought

☐ **Federal Court** ☐ **Federal Circuit Court**

Type: ☒ All filing, setting down, hearing and other fees that may be payable in these proceedings

3 Reason for seeking exemption

I currently hold or receive:

☐ Health Care Card ☐ Pensioner Concession Card
☐ Commonwealth Seniors Health Card
☐ Any other card that certifies entitlement to Commonwealth health concessions
☐ Youth allowance
☐ Austudy payments ☐ ABSTUDY benefits

Or:

☐ I am in receipt of Legal Aid for these proceedings
☐ I have been granted assistance for these proceedings in the Federal Court under Part 11 of the *Native Title Act 1993*
☐ I am younger than 18 years of age
☐ I am an inmate of a prison or otherwise detained in a public institution

Signature

date / /

Court Use Only

☐ **Copy of relevant documents attached** ☐ **Exemption granted (copy of this approval decision given/sent to applicant / /)**

Signature of officer **Date / /**