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19 March, 2013

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



Dear Sir,

re: **Enquiry regarding Impact of Federal Court Fees Increases since 2010 on Access to Justice in Australia**

I humbly make this submission in relation to the Court fees for the Federal Magistrates Court and the Family Court of Australia.

My credentials are:

- (a) I have practised Family Law all of my 41 years of practising life, including for several years in the State Courts under the old *Matrimonial Causes Act*.
- (b) For almost as long, I have had my own law firm which practises only in Family Law matters.
- (c) It is not a practice that takes on Legal Aid assignments and the five Lawyers in this office act for a broad range of individuals from those struggling financially to extremely wealthy people and everyone in between.

(d) Only a very small percentage of our clients have Health Cards, or similar, enabling them to apply for a reduction in their fees (a situation that we understand is quite different to many Firms who practise in Family Law).

1. The Family Court, and subsequently the Federal Magistrates Court, were set up to give access (in a timely, uncomplicated and, accordingly, relatively inexpensive way) for people to have their separation and divorce disputes determined and/or resolved.
2. Unlike most of the work flowing through the Federal Court, or even the intermediate and higher Courts that are State based (in South Australia, the District Court and the Supreme Court) where there are not a lot of ordinary every day litigants, this is a Court that affects most people directly or indirectly one or more times during their life. Anecdotally, for very many people, it is their first ever Court experience.
3. Leaving aside my concern that the fees are not used to increase the budget in the Federal Magistrates Court or the Family Court (something sorely needed in Adelaide which currently operates at least one Magistrate short and presently with one only resident Family Court Judge):-
 - (a) the new fee structure is complicated, unfair and, in many cases, out of proportion to what is involved;
 - (b) it has caused substantial extra administrative work in our office;
 - (c) those firms that take on matters on a "pay at the end" basis are now having to fund substantial extra out of pocket expenses;
 - (d) one might have thought a simpler fee system (if there must be one) might be as follows:

(i) The first Application (whether it be for Divorce or final Orders relating to financial or children's matters) or a Response inclusive of any interim Orders Application filed at the same time	\$500
(ii) Later interim Orders Applications or Applications in a Case or Responses thereto	\$ 250
(iii) Financial Conciliation Conferences and Court Counselling, including reportable Counselling, each party to pay	\$ 250
(iv) Trials set down for 2 days or less - payable half each by the applicant and the respondent	\$1000
(v) Trials set down for 3 or more days - payable half each by the applicant and the respondent	\$2000
4. The above suggested figures would give some certainty and spread the load between the applicant and the respondent.
5. My suggestion overcomes the administrative nightmare in offices of having to continually attend to payments of small amounts of money, for example for Subpoenas.

6. It might be reasonable to make a set fee for anyone who has a concession of, say, \$100 in relation to each of the aforementioned fees.
7. In all, it's the old story – the wealthy can afford to pay, the poor are excused from other than a minimal payment and those in between, many of whom are struggling financially following a recent separation, are hit the hardest.

Yours sincerely,

DAVID BURRELL

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