

23 May 2013

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

Dear Committee Secretary

Inquiry into the impact of federal court fee increases

I refer to the question taken on notice taken at the Public Hearing on 17 May 2013 by Mr Malcolm Stewart, Vice-President of the Rule of Law Institute of Australia ('RoLIA').

RoLIA provides the following response:

"RoLIA does not believe that the imposition of higher filing fees will act as an effective disincentive for unmeritorious or vexatious litigants for a number of reasons.

In relation to the increased filing fees for applications made under the *Family Court Act 1975*, such applications are rarely unmeritorious or vexatious. Most are uncontentious divorce applications, with the only issues potentially in dispute or requiring evidence relating to the twelve month separation requirement or the arrangements for the children. The increased fees in this area are not going to have a deterrent effect on unmeritorious or vexatious litigants. Rather, they will just compound the difficulties faced by ordinary members of society who have been through the trauma of separation and want to get on with their lives by regularising their marital status.

Secondly, there are complex factors motivating unmeritorious or vexatious litigants. They may include mental health issues and certain personality traits. These factors are generally unresponsive to "price signals". In fact, raising filing fees may add to the sense of grievance felt by such litigants or increase their sense of entitlement (having paid the fees) to access to the legal system. More likely, the brunt of dealing with the increased fees is going to be met by administrative staff dealing with applications for reduced fees or fee exemptions.

Finally, the case management systems adopted by federal courts already build in deterrents for such litigants. They include directions for filing adequate court process with particulars, costs penalties for failing to comply with such directions, and facilitation of early strike out applications. That unmeritorious or vexatious litigants still persist in pursuing their claims in spite of rigorous case management and costs orders being made against them reflects a zeal that is unlikely to be affected by increased filing fees. Instead, legitimate court users such as applicants for divorce are being put in the position of subsidising such litigants in the court system.

But it is also necessary to bear in mind that, from time to time, the apparently unmeritorious or vexatious litigant might ultimately serve to elucidate an area of law that others are not willing to challenge. Courts should be accessible without litigants being pre-judged. For that reason, filing fees which act as gatekeepers may prevent legitimate claims being dealt with by the courts. The better approach for that reason is that resources are put towards intensive case management early in the proceedings rather than seeking to proceedings being commenced at all.

Please let me know if I can be of any further assistance.

Yours faithfully

Kate Burns
Chief Executive Officer