

Senate Standing Committee on Legal and Constitutional Affairs
Online Submission

12 April 2013

Re: Inquiry into the impact of federal court fee increases since 2010 on access to justice in Australia

Dear Committee Secretary,

Thank you for the opportunity to make a submission to your inquiry into federal court fee increases since 2010.

The *Federal Court and Federal Magistrates Court Regulations* ('the Regulations') enliven the issue of the right of access to justice. This right is guaranteed pursuant to Article 14(1) and Article 2(3) of the International Covenant on Civil and Political Rights ('ICCPR'), to which Australia is a party. Given the exemptions from liability to pay fees provided by the Regulations,¹ it is likely that the recent fee increases are consistent with Art. 14(1) and Art. 2(3) of the ICCPR. This submission addresses two further considerations in relation to access to justice:

1. The Government needs to be mindful of Art. 14(1) of the ICCPR – as well as Art. 2(3) on which the Statement of Compatibility focuses – in considering future fee increases.² Whilst not an absolute right, Art. 14(1) and similar provisions in other human rights charters shall be violated by inequitable court fees.³
2. The effect of court fee increases should be assessed in a context of broader financial challenges to litigants in accessing justice. Access to legal aid is denied to all but the poorest of litigants, and provision of such aid is particularly strained in remote communities.⁴ The costs of litigation in the

¹ *Federal Court and Federal Magistrates Court Regulations 2012*, Division 2.3.

² Nicola Roxon, *Statement of Compatibility with Human Rights; Federal Court and Federal Magistrates Court Regulation 2012*.

³ United Nations Human Rights Committee, *General Comment No 32*, CCPR/C/GC/32, 90th sess, (23 August 2007) [11]. See, also, *Case of Cantos v Argentina (Inter-American Commission on Human Rights v Argentine Republic) (Merits, Reparations and Costs)* (Inter-American Court of Human Rights, 28 November 2002) [American Convention on Human Rights, Art. 8. The Court held that any domestic measure that imposes costs shall violate Art. 8 if the measure is not warranted by what is reasonably necessary for the administration of justice]; *Kijweska v Poland* [2007] ECHR Application No 73002/01 (6 September 2007) [European Convention on Human Rights, Art. 6.1. The Court held that an applicant's ability to pay court fees should be assessed at the material time based on the subjective circumstances of the applicant's case].

⁴ Community Law Australia, *Unaffordable and out of reach: The Problem of Access to the Australian Legal System*, July 2012, 7-8.



Federal Court are high without the imposition of court fees; the average legal costs for an individual undertaking a Federal Court case ranged from \$74,000 to \$84,000 in 2007/8.⁵

Section 2.06(2) of the Regulations outlines the considerations an authorised officer must look to in determining an exemption from payment of court fees on the grounds of financial hardship. In light of point (2) above, it is recommended that s 2.06(2) includes an additional consideration relating to the projected expenses of the litigation at hand.

Yours Sincerely,

Dr Stefan Gruber and Dr Fleur Johns
Sydney Centre for International Law

Alice Gardoll
Sydney Centre Intern

⁵ Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, 2009, 41.