

The Family Law Practitioners Association of Tasmania

GPO Box 9991
Hobart, Tasmania, 7001

12 April 2013

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

Email: legcon.sen@aph.gov.au

Dear Madam/Sir

RE: SENATE INQUIRY INTO THE IMPACT OF FEDERAL COURT FEE INCREASES

Our association represents the barristers and solicitors in Tasmania who practice in family law.

The family court fees which have been increased or introduced over the last three years have an enormous practical impact on the access to justice for many of our clients, particularly parents and those on low to medium incomes.

Almost everyone who files court proceedings has already tried mediation and negotiation. It is not the case that a high level of court fees is likely to encourage more people to settle without the need for access to courts.

Although it is, for obvious reasons, usually the applicant who is most in need of the assistance of the court system the family court fees fall almost entirely on the applicant.

Most separating couples find themselves in difficult financial circumstances as they try to meet the expense of establishing and furnishing two separate homes. There is generally a significant economic disparity between parties to a relationship, particularly where one has had the primary care of children. Often that parent will be out of the work force, or working part-time, or in low paid work.

Many separated spouses find it impractical or prohibitively expensive to borrow the money necessary to pay court fees.

There is no practical way to recoup court fees from the other party. The family law system is well-designed and achieves a settlement rate in excess of 95% of applications. Settled cases do not require judicial determination so there is no practical opportunity to seek an order that a respondent reimburse an applicant for court fees.

The process for a lawyer of having to notify a client of each fee, collect the fee and then forward it onto the court adds greatly to the legal costs of that client.

When court fees are not paid the court event to which the fee relates (a conference or a hearing) is likely to be cancelled, leaving the case in limbo. This is an awful consequence for an applicant who, having unsuccessfully sought resolution through mediation and negotiation, has come to the court system for assistance. The cancellation of court events wastes valuable judicial time as well as other court resources such as the time of registrars who conduct conferences.

If a litigant is unable to pay fees then their case cannot be advanced. Almost every stage requires the payment of a new fee, even a conciliation conference or a request for the issue of a subpoena.

Attached is a simple scenario which sets out a common experience.

The solution to the problem created by family court fees since 2010 is for the abolition of fees relating to conferences and subpoenas (which should never be discouraged), the reduction of other fees to a level which could realistically be met by a poorly-resourced litigant, and a requirement that fees be shared equally between the applicant and the respondent.

Yours faithfully

President
Family Law Practitioners Association

The Family Law Practitioners Association of Tasmania

GPO Box 9991
Hobart, Tasmania, 7001

COMMON SCENARIO TO ILLUSTRATE THE IMPACT OF FAMILY COURT FEES

The applicant is the primary carer of two children and is in part-time work. She and her husband have attended at the Family Relationships Centre and have negotiated through their solicitors without success. The husband believes the marriage should continue whereas the wife feels that it has no future. The parties are still living together, the wife sleeping in the bedroom with one of the children.

The wife would like to file a parenting and property settlement application in order to reach a resolution which would end the stressful family situation. She has no savings and cannot afford the filing fee of \$500.00 for the application and \$105.00 for an application for interim orders. *Practical consequence of non-payment of fees: no proceedings are commenced and the parties live indefinitely as a separated couple under the one roof.*

The husband files a financial statement which the wife says does not properly disclose the husband's income and savings. Her lawyer advises her to subpoena documents from his employer and his four bank accounts. The fees on subpoena are \$50.00 each, a total of \$250.00. *Practical consequence of non-payment of fees: no subpoenas are filed and the wife fails in her application for interim financial support.*

After an interim hearing the court directs, in accordance with its usual practice, that the parties attend a conciliation conference for which the wife must pay a fee of \$350.00. *Practical consequence of non-payment of fee: the conference is cancelled at the last moment and the case remains in limbo.*

All negotiations having failed the case is set down for a three day trial, requiring the applicant to pay fees of \$765.00. *Practical consequence of non-payment of fees: The trial is cancelled at the last minute and the proceedings remain in limbo. The husband, the wife and the two children continue to live as a dysfunctional family in the matrimonial home. Each member of the family, including the two children, is referred to a psychologist pursuant to a mental health plan to enable them to cope with the stress of their dysfunctional family life.*