



Consumer Credit
Legal Centre NSW

April 2013

Submission in relation to the inquiry into the impact of
federal court fee increases on access to justice
by the
Consumer Credit Legal Centre (NSW) Inc

Consumer Credit Legal Centre (NSW) Inc (“CCLC”) is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 18,000 calls for advice or assistance during the 2011/2012 financial year.

A significant part of CCLC’s work is in advocating for improvements to advance the interests of consumers, by influencing developments in law, industry practice, dispute resolution processes, government enforcement action, and access to advice and assistance. CCLC also provides extensive web-based resources, other education resources, workshops, presentations and media comment.

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Consumer Credit Legal Centre (NSW) Inc

Thank you for the opportunity to comment on the impact of federal court fee increases since 2010 on access to justice in Australia. The Consumer Credit Legal Centre (NSW) Inc ('CCLC') strongly believes that the dramatic increases in federal court fees since 2010 have a negative impact on low-income and vulnerable Australians and act as a barrier to accessing justice.

Courts provide an essential public service and as the cost of accessing justice goes up, it is the most vulnerable parties that will suffer the consequences. The party with the least financial resources will always be the one that is the most disadvantaged in our legal system. The CCLC's low-income clients are generally reluctant to be involved in proceedings in the first place and rarely have the willingness or the bargaining position where they can insist that the other parties will cover federal court fees as a part of a settlement. This is particularly so in mortgage cases where the choice is between risking their home or relying on the possibility the court will exercise its discretion after settlement to waive the court fees.

Recovery of costs is a financial burden on our clients and a further reason they may seek to avoid the court system to address losses they have suffered. The increased federal court fees will force already disadvantaged consumers to resolve their complaints with lenders or retailers on less-favourable terms, if they are able to resolve them at all as legal recourse to the courts no longer becomes a feasible option.

The ability to resolve disputes cheaply, efficiently and quickly contributes to efficient and competitive market outcomes. Any reduction in access to justice in the courts will inevitably have a negative effect on retail and consumer credit markets as unjust or fraudulent businesses are allowed to stay in business because consumers cannot afford to take them to court.

Case Study

The CCLC is acting for a family with seven children. The clients were caught up in a property scam in Western Sydney, involving a property developer who would provide vendor finance and arrange loans on behalf of borrowers to buy properties at an inflated price. Inevitably, the clients were unable to keep up with the payments, and the property was subsequently sold at a significant loss. ASIC had obtained an enforceable undertaking under the ASIC Act from the property developer, and our clients attempted to claim compensation. The matter did not settle and legal proceedings were contemplated.

Senior Counsel was briefed on a pro bono basis as it was apparent the matter was not going to settle and additional parties were involved including negligence claims against a former solicitor. Counsel was briefed and initial advice was to commence in the Federal Court of Australia. However, CCLC looked to the filing fee requirement of the Federal Court, but the clients were not entitled to a continuous exemption and would need to make a fresh application each time a fee arose under financial hardship because:

1. Legal Aid was not available in a Federal Civil matter of the type the clients contemplated;
2. Further, Legal Aid was not necessarily required as CCLC was acting pro bono as was senior counsel;
3. The clients were not concession-card-holders; they were on modest incomes derived from paid employment.

Our clients were struggling financially at the time of the initial application; however, there was no guarantee that the ongoing fees that may arise would be exempted as the matter progressed, or that the fee would be exempted at all by the Registrar. The clients' income, debts and liabilities were and are at a time of flux.

The CCLC as a community legal centre acting on a pro bono basis may be eligible for a deferral of fees. However, the deferral is for 28 days or as directed by the Registrar in writing. No guidance is provided as to when a Registrar may then require payment, or if any circumstances existed in which the fees could be deferred indefinitely or remitted. Because of the lack of certainty about the Federal Court Fees, CCLC (with the advice from Counsel) chose to pursue alternative venues for their matter to proceed.

At the NSW state level, the Court Fees Guidelines give litigants greater certainty. Fees are always postponed for pro bono or legally assisted parties, and after judgment, fees are never taken if judgment is against the party or they are successful but costs are not awarded (or damages nominal). The CCLC was required to reframe their case in the State Jurisdiction in the District Court even though Senior Counsel's preferred location was the Federal Court.

Recommendation

The CCLC urges the government to reconsider its recent federal court fee increases. We consider them to be a barrier to accessing justice and a cause for further inequity in the judicial system. Low-income consumers like our clients are already financially disadvantaged as compared to their lender and retailer counterparts, and recent fee increases only accentuate that disadvantage.

CCLC recommends that the Court:

1. Limits overall fee increases for litigants who are persons and not companies
2. Extends the General Exemption from paying Court Fees to include individuals who are represented by a Community Legal Centre (CLC) or pro bono.
3. Abolishes Deferral Systems due to the administrative burden caused (see case study above).

- a. In the alternative, if deferral systems are to be kept then the following procedure should be used:
 - i. All fees must be deferred for a pro bono or CLC represented party until judgment has been given, and
 - ii. After judgment, fees are not to be taken from a pro bono or CLC represented party if:
 1. Judgment is given against the party, or
 2. Damages are not awarded or nominal damages are awarded, and costs are not awarded in favour of the party.
- *These recommendations are in line with the NSW Civil Procedure Act 2005 and the “Guidelines for the waiver, remission and postponement of fees.” Available at: http://www.lawlink.nsw.gov.au/lawlink/spu/ll_ucpr.nsf/pages/ucpr_publications*

Thank you again for the opportunity to comment on the impact of federal court fee increases since 2010 on access to justice in Australia. If you have any questions or concerns please do not hesitate to contact the Consumer Credit Legal Centre on (02) 9212 4216.

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