

16 April 2013

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

By email: legcon.sen@aph.gov.au

Dear Madam / Sir

Senate Inquiry: Impact of federal court fee increases on access to justice in Australia

Thank you for the opportunity to provide a submission to the Inquiry.

WLSV, established in 1981, is a state-wide not for profit organisation providing free confidential legal information, advice, referral and representation to women in Victoria. Our principal areas of work are family law, family violence intervention orders and victims of crime compensation.

In addition to providing legal services to women, WLSV also ensures that clients' experiences inform the development of law and policy. We also develop and implement preventative family violence programs through education, training and professional development.

We wish to highlight to the inquiry the impact of fees in the family law jurisdiction on the women that we represent. Our clients are some of the most vulnerable and marginalised in our community. They experience significant disadvantage because they are newly arrived, from non English speaking backgrounds, suffer from a disability and/or are victims of family violence. Additionally they suffer significant financial hardship as single mothers, often surviving only on Centrelink benefits.

Fee for application for divorce

On 1 January 2013, the reduced fee to file an application for divorce increased from \$60 to \$265. For a mother on a single parent benefit or disability support pension, a fee of \$265 is prohibitively expensive.

For a victim of family violence, finalizing a divorce is an important step in ending an abusive relationship and recovering emotionally and physically from the trauma of the relationship.

The following de-identified client case studies illustrate the importance of ensuring that divorce is accessible to the most marginalized in our community:

Dina

Dina is a single mother and arrived in Australia as a refugee several years ago. She is on Centrelink benefits and is the sole carer for her 6 year old daughter. She has no assets and lives in a rental property. Every week she must meet the costs of rent, utilities bills, food, school fees and transport.

Two years ago she fled a violent marriage and moved interstate for her safety. After she left the relationship, her husband told all her family and friends in her community here in Australia and overseas that she was adulterous during their relationship. While she is still married to her husband, her family and friends continue to be critical of her and accuse her of adultery. Divorce is an important step for Dina both culturally and for her to finally sever ties from her abusive husband.

Dina has tried to save money to file for divorce, but is struggling to do so. Dina not only needs to pay the \$265 filing fee but also a \$100 translation fee for the marriage certificate and, at least, an \$88 fee for a process server to serve the divorce application.

Sharon

Sharon suffered long term family violence prior to ending her marriage. She was assaulted while she was pregnant and after her baby was born. She has an intervention order against her husband which he has breached multiple times. She is keen to move on with her life and to put behind her the trauma of her abusive relationship.

She was assisted by a community legal centre to prepare her divorce application. She has managed to save enough money to pay the process server to serve her husband with the divorce application. She cannot, however, save the \$265 to file her divorce application as she is on Centrelink benefits and bears sole financial responsibility for her baby. She receives no child support.

Despite having a divorce application ready to file, Sharon cannot get divorced. If Sharon had filed her divorce application in December (and paid the \$60 filing fee) should would now be divorced.

Every day we see women such as Dina and Sharon who are simply unable to finalise the end of their marriage because the \$265 divorce fee is unaffordable.

We recommend that the divorce filing fee be subject to the same fee exemption as all other filing fees are.

Subpoena issuing fee

It has come to our attention that Independent Children's Lawyers (ICLs) are not exempt from the \$50 filing fee for subpoenas.

ICLs are an important part of a family law proceeding. Their role is to gather information regarding children that are the subject of parenting disputes and make recommendations to the court regarding arrangements that are in the best interests of the child. In cases where there are serious allegations of sexual abuse and family violence, the ICLs role is particularly important. Subpoenas are an important part of facilitating the ICL's information gathering role. Subpoenas are regularly issued in order to access children's counseling and medical records, school reports, child protection and police records.

ICLs that are legally aided are unable to pay the subpoena filing fee as the grant of legal aid (in Victoria at least) does not cover such fees. Prior to 1 January 2013, no fees applied to subpoenas therefore ICLs were able to issue the necessary subpoenas without cost.

The current inconsistency threatens the ability of ICLs to undertake a comprehensive assessment of what is in the best interests of the child.

As such, we recommend an amendment to the regulations to specifically include ICLs as an exempt category for the purposes of subpoena filing fees.

Low income earners that are not exempt from filing fees

We believe that individuals on low incomes, who may not necessarily satisfy the test for financial hardship applied by the court, are unfairly disadvantaged by the current structure of fees in the family law jurisdiction.

For those who fall outside of the financial hardship test, full fees apply. This includes, in the Federal Magistrates Court, \$500 to file an application that relates to children and property, \$560 to defend a matter and \$800 for divorce.

We believe that this is prohibitively expensive for a woman on a low income who may not satisfy the financial hardship test because she works and has a small amount of savings in the bank.

We suggest a different approach to assessing court filing fees in the family law jurisdiction, which ensures a fairer, more accessible system for all users of the court system.

We recommend that filing fees be assessed according to an income scale. For example, a person earning \$35,000 pays 30% of the full fee, a person earning \$50,000 pays 70% and a person earning \$80,000 or more pays the full fee.

In conclusion, we believe that there is value in creating a filing fee structure that enables all individuals to access the family law jurisdiction in a fair and just manner.

We hope that the examples and information that we have provided to the Inquiry illustrates some of the current difficulties our clients face in accessing the family court system.

We wish you well in finalizing the Inquiry. If you wish to discuss the issues raised in this letter in further detail, please do not hesitate to contact me on (03) 9642 0877.

Yours sincerely

Pasanna Mutha-Merrennege
Policy & Campaigns Manager
Women's Legal Service Victoria