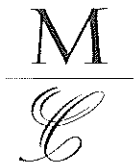


YOUR REF:
OUR REF: MGF:KP
DIRECT LINE:
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MURDOCH CLARKE BARRISTERS
AND
SOLICITORS

10 April 2013

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

Email: legcon.sen@aph.gov.au

PARTNERS
A J DUNHEAVY
K B PROUTER SC
D F EGAN
P KEZIN
R S REED
A I GAGGIN
B S SWAIN
A L HAY

Dear Madam/Sir

**RE: INQUIRY INTO THE IMPACT OF FEDERAL COURT FEE INCREASES
IN 2010 ON ACCESS TO JUSTICE IN AUSTRALIA**

SENIOR ASSOCIATES
M G FOSTER
A G BURROWS-CHENG
R C MANNING
C R HIGGINS

I am a lawyer practicing in the family law in Hobart, having been admitted as a barrister and solicitor in 1979. The court fees variously introduced or increased from 2010 have created considerable hardship for my clients, particularly my female clients and those with the primary care of children. Very briefly, the main problems are as follows:

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B R DANCE

- (a) The fees fall often on the party who has no money. It is very common for a person, particularly a wife or mother, to need the assistance of the court system to obtain financial support, property settlement or parenting orders and for that person not to have been in full-time work or in a well-paying career at the time of separation. These clients are often not eligible for Centrelink benefits but do not have the money to pay for court fees.
- (b) Most people only reluctantly commence proceedings after having unsuccessfully tried mediation and other negotiated dispute resolution processes. The new court fees penalise them when they seek access to justice and they impede the court process by imposing fees at every step including the filing of an urgent interim application, seeking a conciliation conference, filing a subpoena and having a case listed for hearing.
- (c) Although an applicant may be blameless and the proceedings may be necessitated by a respondent's recalcitrance almost all the fees are on the applicant and not on the respondent. Because almost all proceedings are ultimately resolved by a negotiated settlement there is no capacity to

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recoup the fees by obtaining an order for costs against the respondent. It would be ridiculous to spend a significant sum on a stand alone costs application to recover a lesser sum in fees paid by an applicant.

- (d) The administrative steps necessary in a lawyer's office to collect and pay fees add significantly to a person's legal costs. This means that in addition to the burden of the fees themselves the client also have the cost of having to have their lawyer send notification of the fees, discussing the fees with their lawyer, have him/her receive the fees and forward them on to the court. The cost of this is often far greater than the fee itself.
- (e) When fees, for good reason, are unable to be paid this causes enormous inefficiency in the justice system not to mention great hardship for a client. If a conference fee is not paid then the conciliation conference may be cancelled which leaves the proceedings in permanent limbo – the court will usually not allocate a hearing date until it has been assured that the parties have attended a conciliation conference. A party unable to find the fees on subpoenas will not be able to properly prepare their case. When hearing fees are not paid then a trial may be aborted with the effect that not only are the court proceedings (often concerned with the welfare of children) left in limbo but valuable judicial time is wasted.

My suggestions to resolve the problems generated by the fees and the fee increases are as follows:

- (a) That all fees other than a modest filing fee on initiating proceedings and filing a response be removed.
- (b) As a poor second alternative, that fees on subpoenas and conferences and interim applications be removed, that filing fees on initiating proceedings and filing a response be reduced to a modest level, and that hearing fees be reduced to a modest level and imposed on the parties equally.

Yours faithfully
MURDOCH CLARKE

Per:

MICHAEL FOSTER
Barrister, Solicitor & Registered Family Law Arbitrator

