

ADDITIONAL COMMENTS BY COALITION SENATORS

1.1 Coalition senators recognise the importance of regular review and, where necessary, increases of court fees in order to maintain the day to day operation of our justice system.

1.2 Coalition senators heard evidence through submissions and live testimony that raised serious concerns in the case of these most recent fee increases. Three of the primary concerns are summarised as follows.

Revenue measure

1.3 Coalition senators are concerned that court fee increases since 2010 have been, for the most part, a mechanism primarily instituted to generate revenue and are not commensurate with a workload increase or change in the nature of business of the courts.

1.4 The inquiry heard evidence from John Corker, Director of the National Pro Bono Resource Centre, who stated 'from looking at the annual reports of the courts, that the revenue raised through court fees does go back into general revenue...'¹ i.e., rather than the courts directly.

1.5 Under questioning during the Legal and Constitutional Affairs Legislation Committee's Budget Estimates hearings, Mr Peter Bowen, Chief Finance Officer of the Federal Court of Australia, revealed that only a small proportion of the extra revenue raised by the fee increases actually reaches the courts:

Senator BRANDIS: So basically the government has given you about \$1.4 million?

Mr Soden: That is correct.

Mr Bowen: Yes.

Senator BRANDIS: Have you got an actual figure?

Mr Bowen: It is \$1.466 million.

Senator BRANDIS: And the increase in the court fees has generated additional revenue of \$9.24 million. So 80 per cent, roughly, has been returned to consolidated revenue and \$1.466 million, or about 20 per cent, has been reinvested in the court. Is that right?

Mr Bowen: That is correct.²

1 *Committee Hansard*, 17 May 2013, p. 6.

2 Mr Peter Bowen, Chief Finance Officer of the Federal Court of Australia, *Estimates Hansard*, 29 May 2013, p. 62.

1.6 This evidence highlights that the Government's primary objective in implementing these fee increases is to attempt to balance its own budget, and not of a means to improving the efficiency or operation of the courts.

Access to justice

1.7 Coalition senators believe that any increase in court fees must take the Government's Strategic Framework for Access to Justice and the fundamental principles of access to justice into consideration with significant weighting so as not to preclude any person from the right to access the court system.

1.8 This point was a point made by several witnesses, including the Law Council of Australia:

It flows from this that access to the courts should never be contingent upon the capacity of individual litigants to pay. It has been long accepted that the courts are not a "user-pays" system and that fees, where they are imposed, serve the function of covering reasonable administrative costs associated with handling court documents and processes; and deterring frivolous, vexatious or unnecessary litigation.³

1.9 Ill-conceived rises in court fees have a flow on impact that limits justice at many levels of the community. Associate Professor Michael Legg, appearing in a private capacity, noted:

In terms of the impact on access to justice cost generally is problematic. It does not just impact the poor or the disadvantaged, although it clearly does impact them. It impacts the majority of Australians because accessing the legal system is expensive.⁴

1.10 Coalition senators are concerned that increasing court fees does not necessarily aid in conflict resolution. This point was made by Mr Denis Farrer of the Law Council of Australia, who said:

There is no research, to my knowledge, that would suggest that charging people more is going to mean that they are going to settle their dispute. The reality is that people, if they reach the breaking point in terms of their finances—if the straw that breaks the camel's back is the filing fee—will be unhappy and disgruntled. If you divert them out of the legal system by making it unaffordable that does not mean that their problem is solved.⁵

1.11 It is reasonable to expect, that by limiting access to justice, litigants that should be afforded the right of access to the court system, will allow the matter to remain unresolved.

3 Law Council of Australia, *Submission 26*, p. 4.

4 *Committee Hansard*, 17 May 2013, p. 8.

5 *Committee Hansard*, 17 May 2013, p. 15.

Lack of consultation

1.12 Coalition senators are concerned with the lack of consultation that was undertaken when arriving at the decision to increase court fees by such a substantial amount. As the committee Chair, Senator Wright, correctly pointed out during the hearing:

...everyone believes there should be court fees and we are not objecting to that. Someone, somewhere has to be responsible for overseeing them. But what I see is that the very basic cornerstone upon which this whole structure is built has not been done in consultation with stakeholders.⁶

1.13 The inquiry heard further criticism of the lack of consultation from Mr John Emmerig of the Law Council of Australia:

There has been a lack of consultation, which means that for the bodies we represent—and that is all the law societies and the bar associations, and through them essentially 60,000 front-line practicing practitioners—that input has been lost in the process of setting these fees, and I think that is an important problem.⁷

1.14 The Coalition considers the lack of consultation with stakeholders in the legal fraternity to be a gross oversight on the part of the government. These issues highlight the government's mishandling of the recent court fee increases and show them to be driven largely by a desire to raise revenue than to improve access to justice.

Senator Gary Humphries

Senator Sue Boyce

Senator Michaelia Cash

6 *Committee Hansard*, 17 May 2013, p. 28.

7 Mr John Emmerig, Law Council of Australia, *Committee Hansard*, 17 May 2013, p. 13.