

BALANCE

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Family law fees provoke nationwide opposition

The federal Attorney-General's proposed fees for Family Court matters has met with stiff opposition from family law practitioners and judges around the country.

The President of the Law Council of Australia, David Miles, called the imposition of the fees "the thin edge of the wedge" and expressed his concern that governments would look for other ways to make access to the courts more expensive.

"It is hypocritical of the Government to blame the cost of justice on the legal profession and then to introduce high fees simply for approaching a court to take legal action," he said.

Mr Duffy responded to Mr Miles' criticism by saying he found it "incongruous that the Law Council could attack a proposal which raises revenue from only those users of the court system with a capacity to pay.

"I find it particularly disappointing that a leader of the Australian legal profession consistently calls for more Government funding for the justice system, and yet complains when something constructive is done to provide additional money.

"The Australian public must be even more cynical about such criticism when it is the restrictive trade practices and high fees of the legal profession which are the greatest single inhibitor to access to justice," Mr Duffy said. The head of the Family Court, Chief Justice Nicholson, wrote to the Attorney-General informing him that all judges of the Family Court are opposed

to the imposition of more fees.

The President of the Law Society, John Stirk, said the Society was strongly opposed to the proposed fees which were scheduled to come into effect from 1 October.

A total of six fees were recommended by the federal government's Estimates Review Committee and were announced in the Federal Budget.

Previously, the only fee imposed for Family Court matters was a \$300 filing fee for dissolution of marriage applications.

"These fees will make a dramatic difference to the cost of justice," Mr Stirk said.

He said under the proposed fee scheme

just getting a matter before a judge could cost a minimum of \$650: \$100 filing fee; \$50 for one interlocutory application; and \$500 to have the matter set down for hearing.

"The fees will, in most cases, impose a burden on the very people who can least afford it.

"Further, the failure of these proposed arrangements to provide for the fees to be waived in cases of need is a most serious omission," Mr Stirk said.

"People seeking to obtain support for themselves and their children, and people seeking court intervention to prevent actual physical violence will be denied the assistance of the Court system unless they can pay. (see p2)

WINNERS ARE GRINNERS



1991 Inter-School Mock Trial Champions Darwin High School with coach Trish McInery (left), teacher Chris Marshall and the Chief Justice. More pics pg 16.

The WA case of the principled accused

This is apparently an extract of a transcript from the Supreme Court in Western Australia. The Law Society of WA treated it as the Atticism Award:

COUNSEL: He did instruct me that he has given alcohol away for good and is seeking help for his alcohol related problem whilst - - -

THE ACCUSED: No, don't tell him lies, f... it. If you're going to sentence me, sentence me, you clown.

COUNSEL: I apologise, Your Honour.

THE ACCUSED: Don't go suck-holing up to him.

HIS HONOUR: I do not take any notice of it.

THE ACCUSED: If he's going to f...ing give me gaol, let him give me gaol. Don't suck-hole up to him like this.

COUNSEL: All I would say, sir, is that you are dealing with a remarkably intelligent young man. He has the potential - - -

THE ACCUSED: I don't want no sympathy from a clown. If he's going to give me gaol, give me gaol.

COUNSEL: I must say, sir, that this man has great potential. He is an intelligent young man. It may well be that you would wish to call for a pre-sentence report to see whether the probation and parole authorities would consider him eligible for parole - - -

THE ACCUSED: I don't want parole. I don't want nothing from you people. I just want my f...ing time. You never get a fair deal with this system; no way.

COUNSEL: I sincerely hope he would accept parole, Your Honour, because I repeat, he does have great potential and he could become a respected leader in the community.

HIS HONOUR: Does the Crown wish to say anything in relation to the injuries sustained by the complainant?

THE ACCUSED: Come on, rub it in, you poofter. Just give me gaol and f... this.

HIS HONOUR: Look, Wilson - - -

THE ACCUSED: Get stuffed.

HIS HONOUR: Remove him from the court.

Atticism Award winner: the Accused.

Family law fees

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"The principle of user-pays is appropriate where there is a genuine option to use or not to use the courts, but not in cases of necessity where matters are of a domestic or family nature and not commercial," he said.

Mr Stirk said there may be a case for maintaining court fees for applications for divorce when divorce is the only relief sought, but not in cases of applications involving children and domestic property.

The proposed fees are: setting down fee (applicable to both the initial hearing and any subsequent appeal to the Full Court) \$500; filing fee for initiating proceedings other than proceedings for a decree of dissolution or of nullity of marriage \$100; filing fee for interlocutory applications \$50; filing fee in respect of appeals to the Full Court in Child Support matters \$500; filing fee in respect of appeals from a decree of a court of summary jurisdiction \$100; filing fee in respect of an application for a review of a decision of a Judicial Registrar under section 26C \$100; filing fee in respect of an application for a review of a decision of a Registrar under section 37A \$100.

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A new video, *How to use the Australian Digest*, is now available at the library. It is an excellent guide to making the most of the digest and covers subject, statute and case access.

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