



Queensland Association of Independent Legal Services Inc

7 March 2014

Australian Financial Security Authority
GPO Box 821
Canberra ACT 2601

By email: bankruptcy@ag.gov.au

Dear Sir/Madam,

Cost Recovery Impact Statement: Personal Insolvency and Trustee Services

The Queensland Association of Independent Legal Services Inc (**QAILS**) welcomes the opportunity to comment on the Cost Recovery Impact Statement for Personal Insolvency and Trustee Services in 2013-14 and 2014-15 (the **CRIS**) issued by the Australian Financial Security Authority (**AFSA**). Our comments are limited to the proposed fee of \$120 for the lodgement of a debtor's petition under the *Bankruptcy Act 1966* (Cth).

QAILS objects to the imposition of this fee, and notes that the CRIS fails to consider the impact on the poor and vulnerable individuals who seek to enter bankruptcy. Community legal centres assist many people with unmanageable debts who can't afford to eat, keep sheltered or access medical services. They are certainly not in a position to meet additional, burdensome costs of applying for bankruptcy.

About QAILS and Community Legal Centres

Queensland Association of Independent Legal Services Inc (**QAILS**) is the peak body representing the 33 funded and unfunded community legal centres across Queensland. Community legal centres are independently operating not-for-profit, community-based organisations that provide free legal services to the public, focusing on the disadvantaged and people with special needs.

Queensland is the only state in Australia where the State Government does not fund a dedicated program for generalist financial counselling. As a result, many Queenslanders in financial difficulty are unable to access services which may help them. Access to early financial counselling results in people actually avoiding bankruptcy; for example, a financial counsellor is able to assist a client negotiate repayment arrangements before debts spiral out of control. An evaluation of financial counselling conducted by Dr Nicola Brackertz of Swinburne University in 2012, found that 53% of survey participants avoided bankruptcy.

Partly because of the lack of financial counselling, community lawyers are often asked to provide advice and assistance to Queenslanders with money problems. Generally by the time a client accesses a community lawyer, the situation is very serious. 'Credit and debt owed by client' is the fourth largest civil law problem type where community lawyers provide support. Community legal centres provided advice and information 6,513 times in 2013 and opened 751 new cases in the 'credit and debt' area in 2013.

People we assist who become bankrupt

The people that community legal centres assist with bankruptcy advice face significant financial hardship. Often, they are facing homelessness, or have already become homeless; they are unable to afford to feed their families; their health needs are unaddressed; and some of them come into contact with the criminal justice system.

These people can't afford to eat, keep sheltered or access medical services. They are certainly not in a position to meet additional, burdensome costs.

"Costa" was living in his car, after he lost his job, developed a depressive illness and separated from his wife. He contacted a community legal centre after a former business partner applied to have him declared bankrupt.

Costa had no capacity to meet the costs of housing, and his depressive illness was largely untreated as he could not afford appropriate healthcare. He was unable to access social security payments without the assistance of his community lawyer, and relied on homelessness services to get food and somewhere to shower.

"Tom" suffered a workplace injury, and was unable to work for many years. He was seeking compensation through statutory and common law actions, but these processes were taking years.

Tom lost his house, and his marriage ended. He was sleeping on his friends' couch, which exacerbated his injuries. Tom sought assistance from a community legal centre social worker, to help him liaise with his lawyers, and speed up the process of receiving compensation. While the social worker could provide some assistance, including finding community-based support services that could provide emergency material relief, it was clear that it would take years for Tom to get access to compensation.

In the meantime, he remained homeless, his debts were increasing, and it became increasingly likely that he may need to petition for bankruptcy.

Bankruptcy can provide a fresh start for disadvantaged people; adding barriers to bankruptcy could have a profound impact on achieving social inclusion.

"Murray" has struggled with schizophrenia and drug addiction, which have contributed to complex problems in his life. He was homeless and in and out of prison for many years.

He contacted Prisoners' Legal Service Inc for assistance with his debts, which totalled over \$70,000 including tax debt, housing debt, consumer debts, Centrelink debt and on-the-spot fines debt.

Murray's lawyers helped him to declare bankruptcy, meaning that he could come out of prison to a fresh start. Prisoner's Legal Service 'Safe Way Home' project assisted Murray to prepare a parole application that outlines his relapse prevention plan and reintegration plan to ensure that he was ready for release. As a result, Murray is off drugs, in housing and employment and crime free. Most importantly, his 12 year old daughter appreciates the stability and coping skills that he is developing as he works to rebuild his family as the sole parent involved in her life.

In our experience, it is likely that people will borrow money to pay this fee, which will pass the cost (and significant impost) on to lenders, who would be added to the creditors in bankruptcy. The fee will cause personal and financial hardships for people petitioning for bankruptcy, business, and the broader community.

For those reasons, we recommend that AFSA does not proceed with the proposed fee of \$120 for the lodgement of a debtor's petition.

Fee exemptions

If AFSA does proceed with the introduction of this fee, QAILS strongly supports providing for a waiver of the fee in cases of hardship. Provisions exist in Division 2.3 of the *Federal Court and Federal Circuit Court Regulation 2012*, which generally exempt a person from paying court fees in a proceeding if:

- the body or person has been granted legal aid for that proceeding from a State/Territory Legal Aid Office or an approved legal aid scheme or service (including community legal centres);
- the person is the primary holder of a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card certifying entitlement to Commonwealth health concessions;
- the person is serving a sentence of imprisonment or is otherwise detained in a public institution;
- the person is younger than 18;
- the person is receiving youth allowance, Austudy payments or ABSTUDY benefits; or
- the body or person has been granted assistance under the *Native Title Act 1993* to bring the proceedings.

An individual is exempt from paying a court fee which otherwise is payable in a proceeding if, in the opinion of a Registrar or an authorised officer, payment of that fee at that time would cause the person financial hardship. In deciding this, the Registrar or authorised officer is required to consider the individual's income, day-to-day living expenses, liabilities and assets.

QAILS would support similar fee waivers being introduced for the lodgement of a debtor's petition, if AFSA does introduce a fee for this service. This would be consistent with the policy settings underpinning the fee exemptions in the Federal Court and Federal Circuit Court, and other courts and tribunals, that recognise that filing fees and other costs are a significant impediment to people accessing justice and obtaining fair and just outcomes.

QAILS would welcome the opportunity to discuss these issues with you in greater detail; please contact me on (07) 3392 0092 and director@qails.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Farrell', with a large circular flourish at the end.

James Farrell
QAILS Director