

Court Fees
Department of Justice and Community Safety

By email
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Regulatory Impact Statement on Magistrates' Court (Fees) Regulations and Juries (Fees) Regulations.

Many thanks for the opportunity to respond to the proposed amendments to *Magistrates' Court (Fees) Regulations and Juries (Fees) Regulations*.

The Victoria Law Foundation (VLF) has no specific expertise on the impact of fees, however we are aware of the long recognised access to justice barriers court fees present, particularly with respect to those experiencing financial disadvantage and the access to justice rationale underpinning fee waiver. We also have perspectives which arise from our commitment to access to justice research and rigorous evaluation.

The introduction of three fee tiers and the weighting of fees to better reflect capacity to pay are valuable changes which could have a positive impact on the accessibility of court proceedings, particularly to those who qualify for concession rates.

We are also pleased to see a reduction in commencement fees in wage theft cases and the expansion of exemptions.

These changes also offer a valuable opportunity to collect important data on the people coming to court. Financial circumstance and capacity to pay is one important data point and indicator. It is vital to monitor and evaluate the access to justice impacts of fee change across Victorian community and business. Systematic collection of information on the financial circumstances of those taking legal actions will also provide relevant insight about how accessible Victorian justice is. In particular, collection of information to enable understanding what type of litigants are paying corporate, standard, and concession court fees, for what type of legal matters, together with systematic collection of information about the type of litigants and circumstances receiving fee waivers, would help to both safeguard access to justice and monitor and evaluate fee reform. It also has potential to significantly improve understanding of critical dimensions of litigants, court proceedings and resolution.

For example, for actions commenced at a concession rate, are there any patterns that emerge over time? Do these actions have any particular characteristics? Do they resolve in particular ways? Cross referencing administrative data in this way can be powerful in revealing the profile of court users and their outcomes.

We note the Regulatory Impact Statement identifies gaps in the existing litigant data and also the Department's commitment to developing new ways to capture data about the different characteristics of court users. We strongly welcome such innovation. With respect to the proposed fee reforms, this is critical to assessing access to justice impacts. The VLF recently completed a review of the use and utility of administrative data in Victoria's courts and tribunals, including operational performance and access to justice issues. The review found that data on key litigant characteristics and circumstances was largely deficient and precludes assessment of the access to justice impacts of much court and tribunal reform. The report consequently recommended improved collection of litigant demographic and other

characteristics to enable monitoring and evaluation of both court and tribunal operations and access to justice. The report provides a useful survey of the power of user and people-centred data. It was released in December 2021 and is available at: <https://victorialawfoundation.org.au/research/research-reports/smarter-data-the-use-and-utility-of-administrative-data-in-victorian-courts-and-tribunals/>

It will also be critical to observe and respond to any unintended consequences of the proposed fee reforms. There is risk that some litigants who might have previously received a fee waiver may be shifted into a concession or standard fee. Research demonstrates that legal capability varies significantly across the community, and we anticipate that knowledge and understanding of fee waivers and their requirements affects who applies for and receives them. With this in mind, we urge that any efforts to improve litigant data extend to those applying for and receiving fee waiver.

Additional data points on financial circumstances and capacity to pay, demographic and other litigant characteristics should be collected to enable a clearer picture of court users and their experience. This then can lead to better access to justice and service delivery at court.

Given court fees are intended to defray cost of court services, systematic collection of litigant information should be covered by court fees and funding.

Thanks again for the opportunity to participate and we look forward to the results.

Kind regards



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