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Access to justice reforms

On 22 June 2009, the Commonwealth Attorney-General introduced into Parliament the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009.

The Bill aims to reduce the cost of litigation and minimise unnecessary delays in federal courts. The reforms contained in the Bill are a response to the recent growth in so-called 'mega litigation', where cases can run for years, cost millions of dollars and put a strain on public resources. The costs incurred are often disproportionate to the amounts and issues in dispute. The growing cost of litigation can also prevent non-corporate litigants from obtaining access to justice.

Proposed changes

The Bill introduces three principal changes to the conduct of civil litigation in federal courts. These changes are discussed below.

Federal Court case management powers

The Government's view is that, since the High Court's decision in *Queensland v JL Holdings Pty Ltd* (1997) 189 CLR 146, judges have been too cautious in exercising case management powers (one federal judge described that case as having a 'chilling effect' on case management). The Bill, if enacted, will amend the *Federal Court of Australia Act 1976* to require federal judges to interpret court rules and exercise their powers in a way that would facilitate the just resolution of disputes, according to law, as 'quickly, inexpensively and efficiently as possible'.

Appeal pathways for civil litigation in federal courts

The changes to the conduct of appeals will:

— expand the scope of appellate matters which may be determined by a single judge of the Federal Court

— make it clear that parties cannot choose whether certain matters (including appeals from Federal Magistrates) will be heard by a single judge or a Full Court

— restrict appeals from interlocutory decisions.

Powers of judicial officers

The changes broaden the responsibilities of the heads of federal courts to ensure the effective, orderly and expeditious discharge of the courts' business.

What does this mean for Commonwealth agencies?

The Bill, if enacted, will introduce an overarching, shared obligation on the Federal Court, parties to litigation, and legal practitioners, to facilitate the just resolution of disputes in a quick, cheap and efficient manner. The Commonwealth and Commonwealth authorities will be subject to this obligation when running proceedings in the Federal Court.

The Federal Court will have the power to make disciplinary costs orders where there is a failure to comply with the overarching obligation. This could include, for example, adverse costs orders against a party who incurs costs improperly or without reasonable cause, or otherwise engages in undue delay or misconduct. This will be the case even if a party is successful in litigation.

As a practical matter, the Federal Court will be more likely to penalise litigants who do not comply with court rules or directions (including timetables for the preparation of evidence).

The proposed legislative amendments complement the changes made to the *Legal Services Directions* in July 2008. The *Legal Services Directions* now put a greater emphasis on alternative dispute resolution as a means of resolving disputes. The model litigant policy now requires that alternative dispute resolution be considered before court proceedings commence and also during the course of proceedings.

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