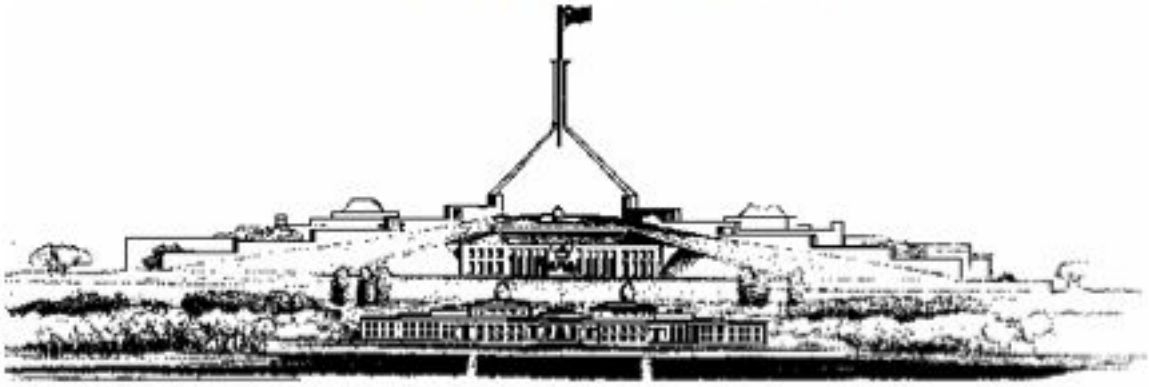
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Main Committee

ACCESS TO JUSTICE (CIVIL LITIGATION REFORMS) AMENDMENT BILL 2009

Second Reading

SPEECH

Monday, 7 September 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Monday, 7 September 2009	**Source**	House
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Questioner		**Responder**	
Speaker	Neumann, Shayne, MP	**Question No.**	

Mr NEUMANN (Blair) (6.30 pm)—I speak on behalf of my constituents who really believe that access to justice is important. I speak in favour of the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009. We have inherited the British legal system. In the UK the courts ran themselves for many centuries, usually with the support of the monarch of the time. After Australia was settled, the law of the UK was brought over in 1828. The rise of equity overcame so many of the failings of the common law. The judicature acts in the 19th century in the UK brought much needed reform to its court system. But for much of our legal system, which was established at Federation, there was not much change until we saw the rise of the federal court system in this country.

Law reform was initiated by then Attorney-General Sir Garfield Barwick, to give him his due, in relation to the Matrimonial Causes Act and then by Attorney-General Lionel Murphy in the 1970s. But for much of Australia's legal and constitutional history there was not much change when it came to how courts operated and functioned. Effectively, under our adversarial system, litigants and their lawyers determined how cases would proceed. Judges stood back and listened. They participated, gave sage advice, gave a sage summing up if it was a jury or made a judgment at the end of the case. But that involved lots of delay. When I started practising as a lawyer in the early 1980s that is really how the system operated. We still saw that in the civil courts of the states. There was reform with the federal Family Law Act and the establishment of the Family Court and the Federal Court, but they were in an embryonic state even in the early 1980s.

Courts cost money—they cost a lot of money to run. Litigation costs a lot of money for litigants. It is extremely expensive. The Attorney-General in his second reading speech on 22 June said:

> Put simply, without an accessible system of justice, the public's confidence in the rule of law is compromised. If justice is accessible only to the very wealthy, it loses relevance for the vast bulk of Australians.

I agree with what the Attorney-General had to say. What we need is court systems—federal and state—which are efficient, inexpensive and expeditious. In my years practising as a litigation lawyer I saw many cases turned away, many cases frustrated and many cases delayed not only by the conduct of other lawyers, litigants and the inadequate funding of the court system but also by the idiosyncrasies and eccentricities of certain judges who might not have wanted to hear a case on a particular day. On many occasions discovery, interrogatories and the appearance and preparation for an interim or a final hearing were delayed, allegedly for good reason, without costs orders being imposed on those litigants or the lawyers who procrastinated and obstructed the operation of the court system and the expeditious hearing of litigation.

What we need in this country is to make sure that the rules and regulations for uniform civil procedures that we saw, say, in Queensland and New South Wales and elsewhere are put forward into the legal system at a federal level. We have seen, for example, under the Family Law Act in the Federal Magistrates Court, regulations and rules. Perversely, the Federal Magistrates Court often has different rules from the Family Court, even in exercising family law jurisdiction. We need to make sure that our judges have clarity when it comes to the statutory guidelines in making decisions. But we also need our judicial system to provide an efficient, cost-effective service to the Australian community.

The amendments here do provide for streamlining and for more efficient appeals with respect to the Federal Court in civil proceedings. They also enable the chief justices of the Federal Court and the Family Court and the Chief Federal Magistrate to ensure that they can efficiently discharge the duties and responsibilities of the court in the administration of justice in a way that is cost-effective and smart. I really appreciate the amendments that we are seeing here today, because they will enable courts to more actively manage, in terms of the case management proceedings of the courts, the kind of cases in civil proceedings which are dealt with by the Federal Court and, indeed, the Family Court as well.

So the legislation before the chamber is about effectiveness, accountability, transparency and accessibility. The amendments include an overarching obligation on the Federal Court. That overarching obligation covers

both litigants and legal practitioners, to ensure that there is a resolution of disputes in a just and timely way, quickly, inexpensively and as efficiently as possible. There is clarification with respect to the kinds of directions a court can make to ensure that court proceedings progress through to a resolution by alternative dispute resolution methods or by way of mediation outside of the alternative dispute resolution proceedings of the court or, indeed, to a final hearing or an appeal.

I am pleased that costs are, potentially, able to be imposed upon litigants and lawyers who fail to comply, consistently, with the overarching purpose or objective, because there were many times in my experience as a lawyer where I turned up to court with a client, prepared, only to find that the sloppiness, the failures, and the downright deliberate acts of the other side intentionally to frustrate the court system, resulted in no cost penalty being imposed upon that litigant or upon their lawyer, who often participated or collaborated in the way in which his or her client frustrated my client's attempt to have justice done on that particular day.

The sections dealing with costs are important and timely. It is important that we know that if someone misbehaves with respect to the directions of a court then there are consequences, because if there are no consequences then people simply feel that they can get away with it. What happens then is that we all pay, because litigation is delayed. It means that litigants suffer. And many of these cases involve companies and businesses, and lives are affected in terms of economic loss, emotional cost to the litigants and, in matters to do with family law, real familial dislocation, conflict and aggravation. So the legislation before the House is very important in terms of dollars, but it is also important in terms of people's domestic arrangements and the business operations of our economy. I think it is important that we should support this legislation. It makes clear that costs orders can be imposed upon people if duties and specific conditions and directions made by the court are disobeyed. There is much confusion with respect to rules and regulations and guidelines—

The DEPUTY SPEAKER (Ms AE Burke)—Order! It being 6.40 pm, the debate is interrupted in accordance with standing order 192. The resumption of the debate will be made an order of the day for the next sitting. The honourable member will have leave to continue speaking when the debate is resumed.