



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**Main Committee**

**CIVIL DISPUTE RESOLUTION BILL 2010**

**SPEECH**

**Wednesday, 20 October 2010**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

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<b>Questioner</b>		<b>Responder</b>	
<b>Speaker</b>	Keenan, Michael, MP	<b>Question No.</b>	

**Mr KEENAN** (Stirling) (10.09 am)—I rise to speak on the Civil Dispute Resolution Bill 2010, and I will keep my comments relatively brief. Civil disputes today have the unfortunate association with an adversarial culture; a culture that conflicts with the values our courts are designed to uphold. Too often people involved in civil disputes slide into the litigious entrenchment of a mud-slinging match between two adversaries. This leads to lengthy court battles and the greater burden on the court system.

The aims of this bill are to change that culture to encourage people to turn their minds to resolution. In the case where a resolution cannot be reached, the bill ensures that when such matters progress to court the issues are properly identified, ultimately reducing the time required for a court to determine the matter. The bill is intended to complement the Access to Justice (Civil Litigation Reforms) Amendment Act 2009, which imposed a requirement that federal civil procedure be directed towards the just resolution of disputes quickly, inexpensively and as efficiently as possible. It implements the recommendations of the National Alternative Dispute Resolution Advisory Council in its 2009 report *The resolve to resolve*.

The principle measure in this bill is to require an applicant in proceedings in the Federal Magistrates Court or the Federal Court to file a genuine step statement at the time of commencing proceedings, describing the steps that have been taken in an attempt to resolve the dispute. The requirement does not apply to family law or native title proceedings, which have their own alternative dispute resolution processes. It does not apply to criminal or quasi-criminal proceedings, appeals—including appeals from tribunal decisions—where a party has been declared a vexatious litigant, proceedings that relate to warrants, or compulsory disclosure notice or ex parte proceedings. When proceedings are urgent or if the safety or security of a person or property would be compromised by taking alternative steps, the statement may specify the reasons that such steps were not taken. The sanctions applicable to failing to take genuine steps are at the court's discretion and are in the nature of other failures to comply with the rules of the court, such as appropriate interlocutory orders and orders as to costs. Examples of alternative steps include mediation, conciliation, expert appraisal, early mutual evaluation and arbitration. Less formal processes, including simple offers to negotiate and the timely exchange of information and documents, would also be captured by the requirement.

A potential problem arises in relation to the obligation imposed upon lawyers to advise claims as to compliance with the requirement. The bill provides that the lawyer must not only advise but also assist clients to comply. Costs may be ordered against lawyers personally if they fail to comply with this obligation. Lawyers already have a duty to assist their clients and, where the client accepts the advice, restating it adds nothing. The question, however, arises as to the scope of the obligation upon a legal representative to assist a party to comply with its duty in circumstances in which a party chooses to conduct the proceeding in a manner which may not be in compliance with a duty imposed upon the client.

In conclusion, it is important to note that this bill does not prescribe specific steps to be undertaken. It is about flexibility to enable parties to turn their minds to what they can do to attempt to resolve the dispute before it reaches the courts—I think something that everyone would agree is a sensible outcome. Whilst the coalition support the bill in principle, we reserve the right to move amendments pending the report of the Senate Legal and Constitutional Affairs Legislation Committee's report, which is being undertaken at the moment.