



Judicial Conference of Australia

**STATEMENT BY THE HON JUSTICE STEVEN RARES
PRESIDENT, JUDICIAL CONFERENCE OF AUSTRALIA
4th December 2014: 6.00pm**

**PRODUCTIVITY COMMISSION'S REPORT
ON ACCESS TO JUSTICE ARRANGEMENTS**

The Judicial Conference of Australia has serious concerns about the Productivity Commission's recommendations, released yesterday, for charging higher court fees in civil cases based on the identity of parties and their perceived capacity and willingness to pay¹.

“Justice from the Courts cannot be for sale in our system of government”, Justice Steven Rares, President of the Judicial Conference of Australia said today. “In our nation it is fundamental that everyone is to be treated equally before the law. It is wrong of the Commission to equate the role of the Courts to being “service providers” for people who are “willing” or “choose” to litigate. Most civil litigation, from family disputes to even large commercial cases, comes about because at least one of the parties has no choice but to have their dispute resolved by an independent authoritative decision made by a court.”

“Access to the courts is a basic human right – it is not, and never has been, a ‘service’” Justice Rares said. “The Productivity Commission has failed to understand the fundamental importance of the role of independent courts in our system of government.

It would be just as inappropriate to suggest that Governments should charge constituents, or perhaps just those who could afford to pay, a separate fee to communicate with a member of Parliament. People pay taxes so that each of the

¹ (Recommendations 16.1 and 16.2 at pp 549 and 560 of Volume 1 of *Access to Justice Arrangements*: Productivity Commission Inquiry Report)

three arms of government (Parliament, the Executive (or Ministry) and the Judiciary) can fulfil their constitutional responsibilities.”

Justice Rares said that ordinarily parties engage in court proceedings because they cannot resolve their differences. Very often a government body will be a party in civil proceedings. Access to justice is not facilitated by Governments imposing significant or differential fees on persons, including on those who can afford to pay, who through no fault of their own need a court to decide their rights and liabilities.

The Commission’s proposals for the initiating party, who has a capacity to do so, to pay the up-front costs assumes that that party has, first, chosen, rather than been forced, to litigate and, secondly, the other party or parties, who may be in fact the person(s) causing the dispute, does not have to pay unless the case is finally decided, perhaps years later. “The opponents can have an incentive to drag a case out and make the initiating party keep paying.”

Moreover, the Commission’s proposals prejudge who is entitled to access to the Courts. It asserts that only people qualifying for fee waivers have a right to access to justice and that all other classes of plaintiffs or applicants must first pay, sometimes hefty, fees to exercise their right to seek justice according to law.

Equality of all persons before the law, including equal rights to have the Courts resolve disputes are essential attributes of an independent judiciary. The decision of a court is not a “service”, it is a public affirmation of the rule of law whoever are the parties and whatever their dispute.

The Judicial Conference of Australia, the representative body of the Australian judiciary, expects to give a more detailed response to the report in due course when it has had time to consider other recommendations in both volumes.

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