



# MEDIA RELEASE

Hon. John Hatzistergos MLC  
Attorney General  
Minister for Industrial Relations

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## NSW GOVERNMENT LAUNCHES REVIEW INTO COURT SECURITY FOR COSTS ORDERS

NSW Attorney General today announced a review of the way courts order people to pay legal costs so that they are not lumped with large legal bills when they have been unsuccessfully sued by someone who cannot afford to pay costs.

The review by the NSW Law Reform Commission will also seek for people who cannot afford to launch legal action not to be unnecessarily shut out of the legal process.

“Courts need to ensure that the right balance is struck between protecting defendants from having to wear the cost consequences when the unsuccessful party is without means and allowing litigants to pursue legitimate cases,” Mr Hatzistergos said.

“Under the current system, courts have the power to issue Security for Costs orders which prevent a plaintiff from proceeding with legal action until they have given a security or guarantee that they can cover the defendant’s costs.”

Courts can issue Costs orders to plaintiffs when the plaintiff:

- has lied about or changed their address to avoid the consequences of court proceedings;
- is suing on behalf of another person and the plaintiff will be unable to pay the defendant’s cost if ordered to do so;
- is a corporation and there is reason to believe it will be unable to pay the defendant’s costs if ordered to do so; and
- does not live in NSW.

“These orders play an important function in litigation where it appears a person is positioned so as to avoid paying any potential costs.

“But people should not be prevented from pursuing genuine legal action because of a lack of funds,” Mr Hatzistergos said.

“We need to examine the circumstances in which courts can currently make orders on the application of a defendant and look into whether these should be expanded.”

Mr Hatzistergos said the possible expansion of Security Costs orders also had implications for the corporate litigation sector

“Recently a successful defendant was left \$450,000 out of pocket by an insolvent company despite being backed by a litigation funder,” he said. (*Jeffery & Katauskas Pty Ltd v SST Consulting Pty Ltd & Ors* NSW)

“Greater use of Security for Costs orders to cover litigation funded by third parties could prevent this from happening.”

Mr Hatzistergos said the Commission will also review Protective Cost orders, which enable courts to place a limit on the amount of costs that can be awarded in a case.

“In an environment where legal costs continue to spiral, there is merit in examining the court’s ability to place a cap on the amount of costs that can be ordered against a party.

“This would help plaintiffs with limited funds pursue court action without fear of being crushed by mounting court costs.”

Judge Peter Johnstone of the District Court has been appointed to lead the review, which is expected to be completed in 2010.

**Media Contact: Maria Iannotti 0419 507 123**