shelf life, creating the need for a constant blood supply. I am aware that platelets last only up to five days, red cells up to 42 days and plasma up to one year.

Could I use this opportunity to encourage every individual who is capable of donating blood to consider becoming a blood donor. A gift of blood is a gift of life for at least three people. Please donate your blood to the Red Cross Blood Service.

Forde Electorate: Veteran Associations

Mr RAGUSE (Forde) (9.58 am)—I rise today to speak about the valuable commitment that our veteran associations and sub-branches give to a large number of returned soldiers and their families in my electorate of Forde. I want to particularly mention a few today. One is the Australian Peacekeepers and Peacemakers Veterans Association, the APPVA. Next Monday, 14 September, is Australian Peacekeepers Day. This date commemorates the world's first ever peacekeepers deployed in the field, in Batavia, Java, under the auspices of the UN Good Offices Commission, UNGOC, to the former Dutch East Indies, which is now Indonesia. I have previously spoken about a constituent in my electorate, Bob Wiley, who is committed to ensuring that we remember the service, courage and sacrifice of those who have died since peacekeeping operations began in 1947. I applaud Bob Wiley for his continued efforts to ensure that our local community understands the importance of a memorial for those brave Australian peacekeepers.

The only current peacekeeping memorial in this country sits in my electorate of Forde on the Carl Heck Boulevard. When I talk about memorials of national significance, I continue to be frustrated that we do not necessarily capture well, understand and commemorate our military history and our veterans. With the assistance of dedicated members of the Australian Peacekeepers and Peacemakers Veterans Association and now with the outcome of a national memorial to our peacekeepers through the Australian Peacekeeping Memorial Project, the APMP, the community will continue to remember and pay tribute to our many Australian personnel. I will speak at length on another occasion about the planned peacekeepers memorial in Canberra.

Further, there is the Australian Army Training Team Vietnam Association, otherwise known as the AATTV. The Australian Army Training Team Vietnam was the first unit of the Australian Army to arrive in Vietnam in 1962 and the last to leave in 1972. This unit consisted entirely of volunteers who advised, trained and commanded local forces in the Vietnam War. The AATTV will continue to be remembered as the most highly decorated unit for its size in Australian history. The AATTV memorial at the Australian Army Land Warfare Centre, Canungra—and I have sung the praises of Canungra in the past in this parliament—is referred to as the home of the Australian advisor.

On the 2nd of August this year I had the pleasure of being part of the 47th anniversary of that particular group. My company on that day included the former Governor-General, Major General Michael Jeffery, who is the patron, our Minister for Veterans' Affairs, Alan Griffin, Major General John Hartley, who is the Australian president, and John Gibson who is the association president in Queensland. It was a real pleasure and an honour to be part of that. That was on the day when it had just been announced that the last remaining airmen of those who had lost their lives in Vietnam had been found. It was poignant and emotional to hear the veterans say that we had finally brought our last boys home. It was really good to know that, as a community and as a group, they are remembering the services that all our veterans have rendered for this country.

ACCESS TO JUSTICE (CIVIL LITIGATION REFORMS) AMENDMENT BILL 2009

Second Reading

Debate resumed from 7 September, on motion by **Mr McClelland**:

That this bill be now read a second time.

Mr NEUMANN (Blair) (10.01 am)—When I was speaking previously on the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 I was talking about the overarching obligation found in section 37M, which is the centrepiece of the case management reforms. The legislation here talks about a statutory basis for case management. That is important because, in the past, judges and registrars have been in the position where they have had rules and regulations but those things do not really have resonance. Matters are supposed to be dealt with under statute. From time to time, in my many years of experience as a lawyer, those rules and regulations have borne little resemblance to what was envisaged, I am sure, by the lawmakers when the legislation was passed in the first place. I previously pointed out the example of the Family Court and the Federal Magistrates Court, where there are two separate rules which are supposed to be exercised under the one particular piece of legislation—namely, the Family Law Act—and exercised in the same jurisdiction. It is simply a nonsense.

So a statutory basis for case management is very important. Making sure it is streamlined, effective and efficient is extremely important. What we need are just determinations of these sorts of things—an efficient disposal

of the court's caseload. Nothing infuriates litigants more than turning up to court, having solicitors and barristers there, having all their witnesses there, having prepared affidavits and being ready to go and then, all of a sudden, the other side acts in a way which is contrary to the spirit of the negotiation and settlement of the litigation, resulting in the case going away. Another example would be where, in similar circumstances, a judge is not properly allocated to the hearing. In such circumstances what we really need is for there to be a costs imperative and for courts to actually carry out those costs orders. I think it is really important that, where that type of conduct occurs, a court order can be made for cost orders not only against litigants but also against lawyers.

I have been involved in many cases, many mediations, many arbitrations and many alternative dispute resolution procedures in which the other side was simply not fair dinkum about settling the case. Parties really prepare to try and resolve cases, but what happens is that the other side frustrates it and the matter goes away. This incurs an enormous amount of cost. I have been in circumstances where it has cost litigants thousands and thousands of dollars to prepare; the other side does not have the bona fides and goodwill to settle the matter; the matter goes away; it costs the client a lot of money; and there is no costs order awarded to that person against the other party or their lawyers who, many times, are sloppy and inefficient in their preparation for the mediation, the arbitration or the conciliation conference. What we are talking about here is statutory authority for a court to be able to consider imposing costs for any failure to comply with the overarching duty. That is a really good thing for the efficient disposal of case management and litigation in our courts.

We need to settle disputes efficiently, quickly and with the least amount of costs. One of the important reforms here is the possibility of a costs order when a party unreasonably rejects an offer of settlement of part or all of the proceedings. That is an important punitive measure which can be imposed upon a party who frustrates another party in litigation.

There are issues here which can be resolved by case management. For example, matters can be dealt with on the papers. There are times when a great cast of witnesses can be seen sitting outside a court. You do not need many witnesses on many occasions, particularly in small litigation. If a judge can direct that one or two witnesses are needed or that the matter can be dealt with in chambers or on the papers, or by way of affidavit, that is a good way to dispose efficiently and expeditiously of court proceedings. In this legislation we are talking about a culture change in the way we deal with legislation. So this is a very important law reform.

Many cases should be dealt with by a single judge exercising full court jurisdiction, but unfortunately a lot of litigation prescribes that matters should be dealt with by a full court and not a single judge exercising that jurisdiction. There is also some confusion from time to time in case management as to whether in fact a judge or a full court has authority to say, 'This case should be dealt with in this way.' With respect to interim hearings or interlocutory matters there can be some degree of uncertainty as to whether an appeal from those matters is dealt with by way of a single judge exercising full court jurisdiction or, indeed, whether the full court itself is required. There can be confusion in cases of consent orders which are handed up before the full court. I have been in cases before where you do a full court appeal and then, all of a sudden, you require the presence of the full court to hand up consent orders when you have come to an agreement. That is a terrible cost to the taxpayer and also to litigants. The matter should be able to be resolved efficiently in chambers. The reforms here allow for those sorts of things. We do not want a situation where litigants can choose neither judge nor in fact the method by which litigation is prosecuted or carried out. We want to be in a position where justice is seen to be done. The reforms here go a long way to limiting that.

We also need directions about the length of submissions. I have seen submissions of 100 pages or more. Judges ought to have the statutory power to say, 'I want a 10-page submission on the matters of law and of fact which are relevant to the case.' That is what should happen. Also, we do not need, for example, a barrister or solicitor to stand for a day making submissions. Imagine the cost to the taxpayer of having a lengthy litigation, having a judge sit there and listen to a lawyer speak for days on end making submissions. I have seen that happen. I think it is important that we have a statutory basis for the judge to say, 'I want written submissions.' Many times judges will do this but there is not really a statutory basis for this reform, so this is a very important change.

Often matters should be dealt with in chambers. This is common in civil litigation—for example, in the District Court and the Supreme Court in Queensland—but the same culture is not dealt with in federal courts. It is very rare that a federal magistrate or a Family Court judge will do this sort of thing. Even in circumstances where, under the legislation and the rules of, say, the Family Court, a judge can interview a child in chambers, that is not carried out, often because a social worker prepares a report dealing with the family and dealing with the child and the report goes to the judge. Even in circumstances where there are rules and regulations to permit these things to be dealt with in chambers, that is not actually done. So anything that gives judges a statutory obligation or discretion to do this is a good thing to reduce the cost of litigation.

There are also changes that will enable the Federal Court and the Family Court to manage their resources, not just in improved case management but also to clarify who is in charge. We have a situation where we have courts with the same jurisdiction and the same legislation, but they do not deal with the same registry. The same access point and administration should be there. We have the power to give authority to the chief justices, for example, in the Magistrates Court, the Federal Court or the Family Court to actually run the show. We have had judge administrators who run the operation of the court, and it is funny because it changes from time to time. We should be a position where the Chief Justice, whoever he or she is, actually runs the operation of the court. I think that would be a good thing in all circumstances.

What we need are better services, better administration, better case management, specific powers, specific responsibility given to our judges, a statutory basis for case management, and a statutory basis for the administration of our courts system clarifying the powers of chief justices of the Family Court, or the Magistrates Court or the Federal Court. We need effective discharge of the operation of the business of our court system, which will be good for taxpayers across the country and good for taxpayers in my electorate of Blair. It is also good for those poor people who are subject to litigation and who have to go through the process and engage themselves in emotional and costly disputes on issues that they never wished to have in court in the first place. I commend the bill to the House.

Mr SLIPPER (Fisher) (10.11 am)—I thank the House for the opportunity to make a contribution to the debate on the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009. As a person who practised as a lawyer for many years, I would say 'The cost of litigation is money well spent,' but in the interests of the community it is important that, as elected representatives, we try to make sure that there is access to justice at an affordable rate.

The cost of litigation in civil matters is a matter of concern to the community because it has now got to the stage with court and legal costs that many people have to walk away from their legal rights simply because they are unable to fund access to those legal rights. Sometimes it might mean that a person who does in fact take action might win the case but might ultimately be out of pocket. Of course, one can never be quite sure as to what the result is going to be in a case, and it is possible that, if someone sought to pursue his or her legal rights, the case might be unsuccessful and the litigant might be responsible for not only his or her own costs but also there could well be an award of costs against the person who lost the case, and that happens quite regularly.

There is no panacea, however, to fix this obvious problem, and everyone accepts it is a problem. It would be great if it were possible to solve litigation in an easy, quick and certain way to make sure that people's rights were fully enforceable and that people could receive redress where they were legally entitled. Of course, the court system aims to achieve this. Successive governments over the years have seen access to justice as being a very important matter of equitable decency in our society. Having said that, the cost of litigation continues to go up, and it used to be very difficult for me, as a lawyer, to advise people that at times it simply was not worth pursuing what was clearly a case which ought to have been litigated.

The cost of litigation is one that has always impacted on the abilities of a party seeking to right a legitimate wrong. It has always impacted on the ability of a person to enforce his or her legal rights.These cases are fought, often, by people who believe that they are aggrieved. They can take considerable time, and are therefore particularly costly, as rival parties put forward their legal arguments and present evidence and witnesses in the pursuit of victory.

With this in mind, the bill aims to modify the Federal Court of Australia Act 1976 so as to, among other things, focus the Federal Court on resolving disputes more quickly. This in turn will help to reduce the costs of litigation and also improve the accessibility of legal avenues to those in a financial position that might otherwise preclude them from taking action to enforce their rights. The bill aims to preserve, however, the overarching demand that justice will be served.

It is important for courts to remove inefficiencies where possible. While the courts largely manage how they look after their cases, it is always important that the parliament encourage courts to do proper management so that it is possible to resolve cases as expeditiously as possible. This bill seeks to improve the situation—and certainly its passage will improve the situation—but it is possible that there could be disagreement between the courts and the battling parties as to what constitutes time-wasting, which procedures might be regarded as frivolous and which items of business genuinely needed to be allowed to run, as long as this is done in the interests of achieving justice.

With all that said, the provisions of this bill aims to encourage efficiencies by focusing the court, barristers, solicitors and opposing parties to seek to resolve their dispute as quickly as possible. This provision takes into account some recent high profile cases between warring major commercial companies. The lengthy and regular de-

lays in these cases tie up considerable government and court resources—not to mention the resources of the parties—and contribute to major inefficiencies and massive cost blowouts.

The bill will give the courts the ability to allocate resources according to actual and legitimate needs, taking into account the complexity of the particular case. The efficiency with which the court operates will be supported and improved by further changes outlined in this bill. The bill includes changes that promote reforms to case management and general procedures, that place upon the courts an obligation to seek genuinely a resolution to a particular case and that give powers to the courts so they can issue specific directives to achieve a resolution of a particular case so that the court is able to avoid any unnecessary delays.

The bill also introduces a legal framework to which the courts can refer when issuing directives to ensure that a particular case is dealt with within the law as quickly as possible and that the courts themselves have a legal foundation on which to base their directives. These directives could include: limiting the number of documents that can be tended as evidence, limiting the number of witnesses, referring the matter for alternative dispute resolution, penalties for failing to observe these directives and penalties incurred by those parties who fail to abide by the overarching purpose of resolving a matter within the law as quickly and as fairly as possible.

Schedule 2 of the bill aims to provide a more streamlined appeal process—one that is less confusing and supports the objective of resolving disputes as quickly and as inexpensively as can be expected. These provisions include having a single judge who can make a ruling on a matter, taking away the ability of a party to choose for a matter to be heard by a judge or a full court and clarifying appeals processes from interlocutory decisions.

Schedule 3 provides for amendments that aim to enhance the public view of the justice system. It outlines modifications to the Federal Court of Australia Act 1976, the Family Law Act 1975 and the Federal Magistrates Act 1999 to clarify the powers of the chief justices of the Federal Court, the Family Court and the Chief Federal Magistrate. The bill makes provisions that widen the responsibilities of the heads of these courts to ensure that the business of the courts is effectively discharged.

The Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 is a genuine effort by the government and by the parliament to bring about justice expeditiously and to remove delays. If it works it will enhance the public view of the court system. All of us have heard cases where judges are slow, where people cannot get their cases before a court and even when they are before a court the case seems to drag on forever, with financially debilitating results. This bill is not a panacea. It will not solve all of the problems but it is certainly a step in the right direction. I commend the government for introducing the bill at this time.

Mr SULLIVAN (Longman) (10.20 am)—I rise today to speak in support of the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009). I must say at the outset it is somewhat daunting to be surrounded, in the speaking list, by those who are practising or have practised in the law profession.

This bill represents a continuation of the fine tradition of Labor governments taking innovative actions to improve the accessibility and affordability of Australia's legal system. Attorney-General McClelland is to be complimented on the vigour with which he has pursued reforms to the Australian legal system. His proposed restructuring of the federal court system to amalgamate the Federal Magistrates Court within the Federal Court and Family Court is a sensible initiative which will maximise the effectiveness of both the Federal Court and the Family Court and build in opportunities for simpler matters to be resolved by appropriate legally targeted judicial officers.

The Attorney has also been instrumental in having the regulatory reform stream of COAG adopt a project to truly nationalise the Australian legal profession and create a truly national legal services market. This initiative has considerable benefits for legal consumers through removing the complexity arising from multiple regulatory regimes applying to lawyers and their clients and through streamlining the current 55 separate bodies throughout Australia that have some role in regulating the way in which legal services are provided and the way in which lawyers operate their businesses.

I am very pleased to note that chairing the consultative group for this COAG legal profession reform project is the former Attorney-General in the Keating government, Professor the Hon. Michael Lavarch. This is very appropriate, given Professor Lavarch's own record. As Attorney-General in this parliament, he pursued vigorously the cause of access to justice.

I recall, as a state member of parliament, the 1995 Justice Statement delivered by Prime Minister Keating, which embodied a range of reforms and initiatives championed by Professor Lavarch and I should mention also the member for Denison, the Hon. Duncan Kerr MP, who was the Minister for Justice at that time.

Like the current bill, these reforms had as their aim a system of justice which was cheaper, faster and fairer for average Australians when they required the services of lawyers or the intervention of dispute resolution mechanisms such as the courts. One of the initiatives taken in the Justice Statement was the creation of the National Al-

ternative Dispute Resolution Advisory Council. NADRAC was one of the few initiatives contained in the Justice Statement which survived the pillage of the early years of the Howard government and continues as an important body in promoting both the uptake of alternative dispute resolution and the standards and principles which underline such ADR systems. I note that NADRAC will play an important role within the frame of the proposed bill.

Other matters pursued by the Keating government include items such as the corporate law simplification program, a major expansion in the funding of community legal centres and family counselling services. The same Justice Statement embodied the resources given to the Human Rights and Equal Opportunities Commission to undertake its landmark report into the Stolen Generations. This report, of course, led to the Bringing them home report which has proven to be such a significant milestone in furthering the cause of reconciliation and understanding within the Australian community.

Accordingly, it is only fitting that we have a current government and Attorney-General continuing the tradition of past Labor governments to be truly innovative in the cause of improving Australia's legal system. It cannot be emphasised enough that the Rudd government has a strong commitment to ensuring access to justice for all Australians. This bill will assist in reducing the cost of litigation through the introduction of a new, overarching purpose with which both litigants and their lawyers must comply and will ensure that people will be able to resolve their disputes quickly, efficiently and fairly. This bill will ensure that our system of justice is accessible to all, not just the wealthy.

In 1996, Lord Woolf, an English Law Lord, produced a report on access to justice. I want to read into *Hansard* two passages from that report, as they eloquently outline the principles and the problems in relation to access to justice. Lord Woolf said:

(1) In my interim report I identified a number of principles which the civil justice system should meet in order to ensure access to justice. The system should:

(a) be just in the results it delivers;

(b) be fair in the way it treats litigants;

(c) offer appropriate procedures at a reasonable cost;

(d) deal with cases with reasonable speed;

(e) be understandable to those who use it;

(f) be responsive to the needs of those who use it;

(g) provide as much certainty as the nature of particular cases allows; and

(h) be effective: adequately resourced and organised.

(2) The defects I identified in our present system were that it is too expensive in that the costs often exceed the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigant and the under resourced litigant. It is too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces the fear of the unknown; and it is incomprehensible to many litigants. Above all it is too fragmented in the way it is organised since there is no one with clear overall responsibility for the administration of civil justice; and too adversarial as cases are run by the parties, not by the courts and the rules of court, all too often, are ignored by the parties and not enforced by the court.

These principles and problems are universal. Costs of litigation, for instance, are lacking proportionality. In this second reading speech the Attorney cited two cases where costs to the litigant and also to the public—the taxpayers who fund the court system—were disproportionate, to say the least.

The costliest of those cases, known as the C7 case, was the subject of a presentation by Justice Sackville to the New Zealand Bar Association International Conference held in Sydney in August last year. In that speech, Justice Sackville, a strong advocate for proportionality, commented on the expenditure of in excess of $200 million on a case where what was at stake in the proceedings was a similar amount—that is, about the same amount of money that they might have returned from the expenditure of that $200 million—saying at the time that it 'bordered on the scandalous'. In considering this, people might like to also contemplate the fact that the sum of around $250 million was all that was spent by political parties and candidates in the 2009 federal election, where the stake—that is, government of Australia—was not inconsiderable. The C7 case, on the other hand, grew out of television rights for football games.

The excellent *Bills Digest* produced for this bill by the Parliamentary Library provides us with a simple and succinct overview of the provisions of the bill. Those provisions go to case management, jurisdictional appeals and judicial responsibilities. These were covered in depth by the member for Blair, who spoke a little while ago, but they are worthy of a further brief mention. Firstly, the bill amends the Federal Court of Australia Act 1976 to introduce case management and procedural reforms which will facilitate judges more actively managing cases before the courts and should bring about cultural change in the approach to resolving disputes.

Case management provisions are centrepieced by the insertion of a new provision in the Federal Court Act 1976—new subsection 37M(1), which provides 'that the overarching purpose of civil practice and procedure provisions is to facilitate the just and legal resolution of disputes as quickly, cheaply and efficiently as possible'—the very principles about which Lord Woolf spoke. The amendments will also clarify the kinds of directions the court can make to control the progress and conduct of proceedings. Where parties or their lawyers fail to act consistently with the overarching purpose or fail to observe the court's directions, the court will have discretion to make an order for costs against the parties or their lawyers personally. In addition, the current section dealing with costs will be amended to clarify the kinds of cost orders that can be made.

Secondly, the bill amends the Federal Court of Australia Act 1976, the Family Law Act 1975 and the Federal Magistrates Act 1999 to clarify the powers of the Chief Justices of the Federal Court and the Family Court and the Chief Federal Magistrate to ensure the effective discharge of the business of the court. The amendments identify specific powers and responsibilities to the head of each federal court to make arrangements regarding the constitution of the court in particular matters, assigning case load to judicial officers and ensuring judicial officers have appropriate access to annual health checks, short-term counselling services and judicial education. The amendments will also clarify the role of the head of court in determining where judges sit.

Thirdly, the bill amends the Federal Court of Australia Act 1976 to provide for a more streamlined and efficient appeals pathway through the Federal Court and civil proceedings. These amendments will assist the court in managing its resources by providing greater flexibility in dealing with appeals and related applications. They also remove confusion for litigants about appeals pathways from interlocutory decisions and confirm the courts' powers to manage appeals appropriately and efficiently. These are sensible reforms that will align our courts with the eight principles outlined by Lord Woolf in his report on access to justice in the United Kingdom and help counter in our system the seven defects he also identified.

In concluding my comments today, I want to repeat the words of former Prime Minister Paul Keating, who, in launching the justice statement in 1995, said: 'If we can create a justice system which is simpler, cheaper and more accessible, we will extend our democracy and strengthen belief in it. We will increase our respect for our laws and the ideas and principles on which they are based.'

Given the commonality of Labor's 1995 justice statement and Lord Woolf's report on access to justice, one can only speculate as to the reasons the Howard government may have had for not moving forward on this and making Australians wait 13 years for these sensible changes. The member for Fisher, in his contribution a moment ago, recognised the problems that exist that this bill is designed to overcome. They existed in 1995 when the justice statement was made. They existed in 1996 when the Howard government came to power. It is a tragedy that we have had to wait until 2009 for these to be remedied.

Mr DREYFUS (Isaacs) (10.32 am)—Access to justice is important. We need our courts to be able to provide real, affordable access to all citizens, not just pay lip-service to it. The legislation which governs federal courts needs to encourage and assist real, affordable access. The Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 goes a long way to achieving those aims and for that reason I am very pleased to support this legislation. This bill will amend the Federal Court of Australia Act 1976, the Family Law Act 1975 and the Federal Magistrates Act 1999, which are the three acts of this parliament that establish the three federal courts: the Federal Court, the Family Court and the Federal Magistrates Court.

This bill is consistent with a very considered program that the Rudd government has undertaken and that the Attorney-General has prosecuted that is directed at reform of our court system and reform of procedures within our court system, all directed to ensure that all citizens have as full access as possible and that all citizens have access which is affordable, and that public resources are not devoted in a disproportionate way to the resolution of disputes. It is consistent with the approach that the government has announced already in relation to the abolition of the Federal Magistrates Court, a matter which has already been reported on and which a number of other speakers on this legislation have commented on, and is still a work in progress. The purpose of course of abolishing the Federal Magistrates Court is to achieve an overall federal court restructure that the government believes will reduce litigation costs and facilitate faster resolution of disputes.

What this bill does is to insert, first of all, in the Federal Court of Australia Act some provisions which will improve the authority of federal judges to case manage litigation that is in the civil jurisdiction of the court. Case management is itself a relatively new term. It is intended to convey the notion that no longer should we allow civil disputes to be entirely managed by the parties to those disputes and their lawyers so that the rules of court are simply there to be used and manipulated in a way which the parties think suits their interests, without limit, without regard to cost and—as was the traditional view—without direct interference or direct control by any judge. Case management takes issue with that traditional approach and says that judges of the court, and magistrates in

the Federal Magistrates Court, are entitled to, and indeed should, in the public interest manage litigation coming before the court so as to ensure that the resolution of disputes is achieved within the shortest possible time and with the least possible cost—and by cost I mean not only cost to the parties but cost to the public purse.

It has been thought, ever since the decision of the High Court in the State of Queensland v JL Holdings, that the interests of justice being the touchstone of civil litigation in our courts were a reason for limiting the power of judges to engage in case management. I note, as have other speakers on this bill, that one of the intents of these amendments is to ensure that that decision of the High Court is not able to be raised, as it has been since the decision was handed down in 1997, as a bar to judges engaging in vigorous case management, to judges seeking to shape and control the way in which disputes are conducted in their courts.

I note that the Law Council of Australia, the peak body for Australia's lawyers, has provided a submission to the Senate Legal and Constitutional Affairs Legislation Committee directed at this access to justice bill. In it, the Law Council has broadly welcomed the reforms. It is worth quoting from the submission because the Law Council of Australia, represents all of Australia's lawyers. It is the peak body for Australia's lawyers and represents over 50,000 lawyers across the country. It is in a position to provide perhaps as informed a comment as it is possible to provide in relation to legislation such as this. The Law Council's submission said:

The Law Council broadly welcomes the reforms which are the subject of the Bill. It is clearly an attempt by the government to encourage more efficient and cost effective civil litigation, and that is a laudable and non-contentious aim.

The submission goes on to say:

The costs of lengthy and inefficient litigation are carried not only by the parties themselves but also by taxpayers who fund the operation of the justice system. Judicial salaries, court officer and registry staff salaries, and court premises costs are incurred unnecessarily by litigation that is not efficient or cost effective. If inefficient litigation monopolises court resources then those that cannot afford protracted litigation are prevented from accessing the justice system.

I will pause there to say that what the Law Council is saying in its submission is correct. If litigation becomes so expensive in terms of time, resources, fees paid to lawyers, fees paid to courts or fees and costs that are incurred in paying all of the other many people who are involved in protracted litigation, if that becomes prohibitive, then we will have a situation where there is indeed a denial of access to citizens. Some have mentioned in their speeches on this bill a notorious case, the C7 litigation. Others have mentioned the Bell case. I could mention a range of very, very lengthy commercial proceedings that have unfolded in recent years in the Federal Court and state supreme courts. Certainly, the supreme courts in Western Australia, New South Wales and Queensland, as well as the Federal Court, have seen trials—some of which I have participated in, I have to say—that have gone on for many months. They occupy dozens of court days—sometimes over 100 court days—and many lawyers, with consequent great expense. One has to ask, when one looks at litigation of that scale, whether it is even remotely affordable to ordinary citizens and whether the higher courts of this country have become, for the purposes of civil litigation, the preserve of the rich, large corporations and governments, which is not the kind of access to justice that anyone would wish to see.

I will quote again from the Law Council's submission because it does very much commend the thrust of this legislation. The Law Council said:

The Law Council recognises that the traditional system of adversarial justice, in which pre-trial procedures are left entirely in the hands of the parties, is no longer considered an efficient model of dispute resolution. It is now well accepted that courts and judges have a role in actively participating in and managing this process. Yet there remain a minority of cases in which litigants may attempt to exploit the procedures available to them, such as discovery, to achieve an advantage regardless of cost or proportionality. Case management procedures, ADR—

alternative dispute resolution—

and other proposals all have … a role to play in improving the efficiency of litigation.

In referring to 'a minority of cases', the Law Council is really talking about the cases that we have all seen in recent years where litigation is almost used as a tool of commerce, rather than as a true dispute resolution mechanism, and where resort to the higher courts is used as a club in the jungle of commerce in Australia. That is of course not an appropriate use of the court system.

There is a passage in the judgment of the majority in the State of Queensland v JL Holdings case, which I mentioned a moment ago, that is most often cited when people raise the case in courts as a basis for resisting the involvement of a judge in serious case management. This is the passage from the judgment of 1997:

Justice is the paramount consideration in determining an application such as the one in question. Save in so far as costs may be awarded against the party seeking the amendment, such an application is not the occasion for the punishment of a party for its mistake or for its delay in making the application. Case management, involving as it does the efficiency of the procedures of the court, was in this case a relevant consideration. But it should not have been allowed to prevail over the injustice of shut-

ting the applicants out from raising an arguable defence, thus precluding the determination of an issue between the parties. In taking an opposite view, the primary judge was, in our view, in error in the exercise of her discretion.

That kind of statement of principle, if taken to its ultimate conclusion, leads to judges being deprived of the opportunity of imposing what might perhaps be seen as arbitrary limits or what might perhaps be seen as a strict control on litigation. Judges are deprived of the ability to manage in that way. There does come a point at which the pursuit of some ideal of justice at all costs—and I mean justice at all costs—has to be the subject of some limits. I appreciate that this probably raises some quite deep philosophical questions about where the court system should strike a balance. But what this legislation does is empower judges to resist the suggestion that court procedures are entirely in the hands of the parties and empower judges to impose control on the conduct of litigation in their courts.

It is probably worth mentioning by way of example that, of the reforms that have been introduced in the last two or three decades in Australia in the higher courts, one of the most important has been the introduction of court ordered mediation, which is a form of alternative dispute resolution—there are others. Mediation, in a traditional sense, has always been thought to be a form of dispute resolution which only works on a consensual basis. In other words, if the parties are not both or all willing to engage in a mediation process then it is a process which is not likely to succeed. For that reason, it was long thought that a process which required the parties to attend mediation because a judge ordered them to attend was a process that was not likely to achieve effective results. The experience since the introduction of court ordered mediation, which is now employed as a matter of course in all higher courts—the Federal Court, the state supreme courts and the Family Court—has been that, far from not producing satisfactory outcomes, in the majority of cases where mediation is ordered settlements are produced, and they are settlements which are satisfactory to the parties.

It is the embrace of alternative dispute resolution processes in the last two or three decades that is in part recognised by this legislation, which will, as I have said already, empower judges to direct litigation in their courts. It will empower judges to set deadlines, to require tasks to be completed, to vary directions that have previously been made and to refer cases to a range of alternative dispute resolution processes—all of which ought to be within the power of judges and all of which ought to be able to be exercised without being met by a complaint that in some way a judge exercising that kind of case management power is not in the interests of justice.

There are a range of other reforms introduced in this legislation. Another reform is to limit the interruption of civil cases that can occur by appeals against interlocutory orders made by judges. There are some provisions in this bill which will ensure that the opportunity to interrupt the flow of civil litigation by appealing against an interlocutory order is a great deal more limited than it has been in the past.

The legislation contains a range of incremental reforms. Whether or not the reforms are going to lead, as hoped, to more real and affordable access for citizens to federal courts—the Federal Court of Australia, the Family Court and the Federal Magistrates Court—is something that will need to be judged over time. Simply changing court procedures, empowering judges and changing rules that apply to litigation in the superior courts is not of itself something that can be seen to immediately produce the increased access to justice which is the intended result. But I am confident that over time the reforms which are contained in this bill will greatly improve access to justice in matters that are within the jurisdiction of the three federal courts—one of which, it is hoped, will soon go out of existence. But these reforms will improve access to justice in the federal courts. They will be able to be judged over time and indeed should be re-examined, perhaps in a few years, to ensure that the intent of the reforms has in fact been achieved. I commend the bill to the House.

Mr McCLELLAND (Barton—Attorney-General) (10.49 am)—in reply—I would like to thank members for their contributions to the debate on the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009. They have been excellent contributions, some made on the basis of very valuable experience, as the previous speaker was able to demonstrate. The Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 forms a key part of the Rudd government's agenda to improve access to justice.

The amendments in the bill will streamline procedures in the Federal Court and assist in reducing the cost and complexity of litigation. The bill is bringing about a cultural change in the way litigation is approached from well before the parties go through the doors of the courts and throughout the litigation. Whilst access to justice is about more than court proceedings, this cultural change is an important step to improve access to justice for all court users—that is, obviously, the litigants, lawyers and members of the court, including court staff.

The bill contains a number of important reforms to enable the court to more effectively manage large and protracted litigation. These amendments have been developed in close consultation with the court and I would like to acknowledge the hard work that the court has done in the development of these reforms. They seek to address the

increasing demands that are placed on finite resources. I note that the Federal Court submission to the Senate Standing Committee on Legal and Constitutional Affairs states:

> These amendments will help achieve the Court's goal of an effective and accessible system of justice where people are able to resolve their disputes quickly, efficiently and fairly.

Other amendments will enhance public confidence in the administration of justice. They clarify the role of the heads of court and broaden their responsibilities to ensure the effective discharge of the business of the court.

In terms of case management, as I said when I introduced the bill, this bill will ensure the parties and their lawyers are encouraged to work towards narrowing the issues in dispute and of course where possible resolving them in the simplest possible manner. The new overarching purpose of civil procedure provisions is to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible.

The High Court's recent decision in Aon Risk Services Australia Limited v Australian National University supports the active case management powers introduced by this bill. The High Court stated:

> In the past it has been left largely to the parties to prepare for trial and to seek the court's assistance as required. Those times are long gone. … It is recognised by the courts that the resolution of disputes serves the public as a whole, not merely the parties to the proceedings.

When I say that the decision supports the active case management powers of course I am not saying that the court considered these specific provisions. But I think that quote which I have just read out supports in principle the thrust and purpose of the legislation that we are proposing. In a similar vein, Chief Justice French made the very telling point that undue delay can undermine confidence in the rule of law. He said:

> … the adversarial system has been qualified by changing practices in the courts directed to the reduction of costs and delay and the realisation that the courts are concerned not only with justice between the parties, which remains their priority, but also with the public interest in the proper and efficient use of public resources.

It has been suggested by some that active case management in this bill may require additional judicial resources. I disagree with this. Obviously it is important to provide adequate resources to the courts but actively managing cases, we believe, will lead to efficiencies and better use of existing judicial resources. In terms of appeals, the bill also provides for a more consistent and simplified approach to appeals. These amendments will not only enable the courts to have great flexibility in dealing with appeal procedures but also assist litigants by removing confusion arising from current case law. Importantly, these amendments will provide for the efficient use of resources by eliminating unnecessary steps in litigation. Each step of course has its own cost implications for clients. This will ensure that the court's time is not spent unnecessarily hearing appeals from minor procedural decisions.

On this point, I want to respond to a criticism of the bill that has been made. It has been said that by removing the right to appeal interlocutory decisions relating to security for costs there is not an adequate protection for litigants' rights. To address that, to ensure that there is adequate protection, a safeguard is being introduced to ensure that litigants will not be disadvantaged by the proposal to remove appeal rights in relation to a limited number of interlocutory decisions, including a decision relating to new section 24(1AA). This safeguard will provide that an interlocutory decision, including a decision relating to that section, may be listed as one of the grounds for appealing a final decision, even if there is no appeal pathway from that particular interlocutory decision. This in turn will ensure that there will still be an appeal pathway open when the appeal pathway for a decision under section 24(1AA) is removed. Similar legislative provisions which limit appeal rights against interlocutory decisions, including decisions in relation to security for costs, already exist. For example, section 94(2F) in the Family Law Act 1975 provides that power.

In terms of judicial responsibilities, Australia has a federal judiciary of the highest calibre. The amendments I have introduced concerning the powers of the chiefs of our federal courts will further enhance public confidence in the justice system. We are blessed with people of very high calibre serving in those offices, and obviously in the future that will remain the case. The amendments give the head of each federal court the responsibility to ensure the effective discharge of the business of the court. The bill ensures that judicial resources of courts can be adequately managed and allocated according to need by assigning judges to particular locations.

I would now like to address some specific comments raised by the opposition, including by the shadow minister. The shadow minister referred to a submission by the Law Council of Australia to the Senate Standing Committee on Legal and Constitutional Affairs, which is currently inquiring into the bill. The first criticism is that the duty imposed on lawyers by the bill goes too far. The government believes a cultural change in the way litigation is conducted can be achieved only if the court, the parties and their legal representatives are all on the same page. Obviously in this parliament we cannot dictate culture but we can set the legislative framework that influences the development of culture. We believe there would be little merit in imposing a duty on parties, like the one introduced by new section 37N, if their lawyers were not also obliged to comply with the duty in some way. We would

go so far as to say that in some instances, unfortunately, a client may need some additional impetus on the part of their lawyers to aim at resolving disputes when it may not necessarily be in the lawyers' financial interests for that matter to be so resolved. I should indicate and stress that that propensity on the part of some lawyers is one that is diminishing. I think that by and large the culture in the legal profession is to do everything they reasonably can, firstly, to keep their clients out of court and, secondly, if involved in litigation, to resolve those matters as quickly, effectively and cost-efficiently as possible. Nonetheless, I think that reality suggests that there are some who could reform their ways, and in some senses this legislation will give some solace to their clients that the expectation will be on all participants in the process.

The proposed provisions do not go as far as the New South Wales legislation in respect of a similar issue. Section 56(4) of the New South Wales Civil Procedure Act 2005 provides that:

A solicitor or barrister must not, by his or her conduct, cause his or her client to be put in breach of the duty ...

The provisions in the bill help avoid a situation where the lawyer is torn in two different directions by their duty to follow their client's instructions and the duty to comply with the overarching purpose. Therefore the bill—and obviously I am talking about the provisions before this parliament—strikes, we believe, an appropriate balance in relieving a lawyer from those two different obligations.

The Law Council also argues that new section 37N(1) abrogates settlement privilege. New section 37N(1) requires the parties to conduct all aspects of the proceedings, including settlement negotiations, consistently with the overarching purpose. Normally, settlement negotiations are privileged. They will remain so following the introduction of this bill. Concerns have also been raised that, when the court is deciding whether to make a cost order under new section 37N(4), the court may have to inquire into the way the settlement negotiations were conducted, and the settlement privilege will be abrogated—or so the argument has been presented. We believe that this will be unnecessary. The court only needs to be satisfied that a reasonable attempt has been made to settle the dispute in accordance with the overarching purpose, which would not require full details of the settlement negotiations to be given as evidence.

Finally, the Law Council argues that the proposed power of the court to limit witnesses goes too far. New section 37P(3)(c) allows the court to make a direction limiting 'the number of witnesses who may be called to give evidence, or the number of documents that may be tendered in evidence'. It is said that this provision overrides the parties' prerogative to make decisions of this type. This concern really comes back to the key purpose of this legislation and the balance of private and public interests which must be struck in the conduct of litigation. Litigation is not a plaything of the parties or something that can be exploited to their advantage by the party with the greatest resources. Significant judicial and public resources are made available to resolve matters, and it is important that these resources are used to best effect. Unnecessary witnesses and submissions simply add to the time taken to resolve matters and to the costs to the court, the parties and ultimately the taxpayer. These case management reforms are about achieving a cultural change in the way litigation is conducted and ensuring that the court has the active case management powers required so that the overarching purpose can be applied to all proceedings. It will be open to the parties to make submissions about the number of witnesses they require to make their case and the number of documents they wish to tender. The new provision does not prescribe what the limits should be. This will be determined on a case-by-case basis by the presiding judge, who may indicate to the parties whether they have been persuaded in respect of a particular matter and require no further persuasion in respect of that particular item.

This bill highlights the Commonwealth's commitment to improved civil justice outcomes for all Australians. Making the best use of our court resources is an important factor in achieving better outcomes. This bill will ensure that matters before the Federal Court are to be resolved by the simplest means possible. This is an important step in strengthening the civil justice system and creating a legal framework that provides fair and effective access to justice for all. In short, while it is the case that legal practitioners both serve their client and are officers to the court, the culture that we are promoting is that all participants in the justice system will be servants of the justice system as a whole. The amendments support many practices in place in the court and reflect the commitment of Australia's federal judiciary to excellence.

Question agreed to.

Bill read a second time.

Ordered that the bill be reported to the House without amendment.