



Judicial Conference of Australia

**STATEMENT BY THE HON JUSTICE STEVEN RARES
PRESIDENT, JUDICIAL CONFERENCE OF AUSTRALIA
Embargoed to 26 June 2015**

JUSTICE SHOULD NOT BE FOR SALE

The Judicial Conference of Australia rejects recommendations to adopt a user pays approach to court fees in civil cases, made by the Productivity Commission in its 2014 *Report on Access to Justice Arrangements*.

Justice Steven Rares, JCA President, said that the recommendations were fundamentally flawed¹. He said that the Commission had not understood that everyone has a common law right to unimpeded access to the Courts, as the High Court said in 1994. If people were deterred by high fees from going to court to resolve disputes they could take the law into their own hands. Justice Rares explained that is why courts have to be open to everyone and access to them must not be sold by governments imposing user pay fees.

Justice Rares said that if governments charge cost recovery scale fees for access to the courts they could prevent or deter people challenging government decisions in court. Higher fees would hurt only a person who wants to sue an alleged wrongdoer. Moreover, significant court fees allow well-resourced defendants to use economic tactics to string the length of cases out and exhaust a plaintiff's ability to sue by making the plaintiff pay high daily fees as a condition of the case proceeding in court.

Justice Rares said that the constitutional role of courts is to hear and decide disputes. He said that everyone is equal before the law and that the words of *Magna Carta*, that "to no one will

¹ at the *Access to Justice – Taking the Next Steps* Symposium held on 26 June 2015 at Monash University, organised jointly by the Australian Centre for Justice Innovation and the Australasian Institute of Judicial Administration

we sell, to no one will we deny or delay right or justice”, are fundamental to the rule of law. Going to court is not a choice people make, he said. They usually go to court because they have no choice. He criticised the proposed increase of over 300% in filing fees for divorce cases. Frequently, separating parties are unable to resolve their disputes about custody of children or property, and those issues can only be authoritatively decided by courts.

He said that the Productivity Commission’s treatment of courts as “service providers” ignored the importance of judicial decisions that establish what the law is, not only for the parties to a case, but for the whole of our society.

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