

## Attorney calls for more talk, less action

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FEDERAL Attorney-General Robert McClelland has urged government agencies to be less reliant on litigation by using alternative dispute resolution (ADR) as a way to reduce legal costs and the burden on the court system.

Mr McClelland said government needed to play a leading role in encouraging greater use of ADR, given disputes were often between government agencies and individuals with limited means.

“I think it is time for us to reassess whether the commonwealth too often falls back on litigation when it is faced by a dispute,” he said at a National Alternative Dispute Resolution Advisory Council conference on Wednesday.

“I want to encourage government agencies to move to a resolution culture.”

A common complaint in the industry is that government representatives say they lack authority to resolve a matter during settlement negotiations, Mr McClelland said.

“As with anyone responsible for managing a dispute, there is always a temptation for public servants to seek the security of a decision by an external authority – either a court or another government agency – rather than exercising and trusting their own judgement,” he said.

“I think there is a greater need for trained, experienced officers, to have the confidence to do this.”

The president of the Institute of Arbitrators and Mediators Australia, Angela O’Brien, said the lack of delegated authority in bureaucracies and some corporations regularly dragged out disputes, inflating costs as a result.

Ms O’Brien welcomed the move to make dispute resolution between government and individuals fair because at times it affected the “very poorest people within our community” the unemployed, pensioners and the disabled.

She hopes ADR will progress to a point where the simplest matters can be heard without the need for lawyers or other professionals.

Ensuring government agencies used ADR more often would also increase their accountability for legal spending, Mr McClelland said.

The first step in a review of this expenditure began last month when the Attorney-General announced the development of standard tendering and contracting documents for agencies and legal firms tendering for commonwealth work.

The Attorney-General’s speech follows a report on civil justice reform prepared by Peter Cashman for the Victorian Law Reform Commission that was tabled in the state’s parliament last week.

It said a wider range of ADR options should be made available and recommended courts be given the power to order non-binding ADRs, with or without the parties’ consent.

The legal profession has supported the report’s bid to narrow the core issues of disputes to reduce costs and lengthy trials.

“I want ADR to be seen as built into the fabric of our system of justice not simply an add-on,” Mr McClelland said.