

Privacy: a foreign concept for Labor's litigators

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JUDGED by the way the federal government has been treating the Federal Magistrates Court, nobody should be surprised if the magistrates begin displaying clear signs of paranoia.

After two failed attempts to restructure the court out of existence, the federal magistrates are on notice that the next version of the government's plan will soon be unveiled.

But other factors must be weighing on the minds of the federal magistrates.

Anyone who has been watching how the government has acted in the bizarre pension row with most of the magistrates will have gained an insight into how the government views its own model litigant rules.

Those rules are supposed to govern the way federal departments and agencies conduct themselves in court.

The rules are contained in the legal services directions that are administered by an agency inside the Attorney-General's Department. They require all government agencies to conduct their legal affairs efficiently, honestly and in accord with the ethical obligations of the legal profession. Now consider what happened in the pension case. If this is fair and efficient, Robert French is an articulated clerk.

The magistrates, who are running a constitutional challenge to their exclusion from the judicial pension, wanted to go directly to the High Court to argue about the meaning of the Constitution.

That would have been a very efficient way of dealing with the case. Instead, the government succeeded in having the case sent to the Federal Court for an evidence-based trial, which is a more costly and time-consuming approach.

In October lawyers representing the government warned lawyers representing the magistrates that if the magistrates persisted with their claim it could lead to a ruling invalidating the statute that established the court and ending their judicial appointments.

Over Christmas the magistrates have had time to ponder the implications of the government's latest move, which aims to force the magistrates to disclose their financial affairs, including the value of their assets.

That risk, of course, would only apply to magistrates who continue to support the pension challenge. Some have withdrawn.

It makes no difference that the government says it has no intention of broadcasting this information. It's still outrageous.

Why should any bureaucrat have the right to inspect the private financial affairs of the magistrates? It's none of their business.

The fact the government's lawyers have been permitted to go down this route shows huge hypocrisy within the government when it comes to privacy.