

# Civil Procedure Act 2010

No. 47 of 2010

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**Victoria**

# **Civil Procedure Act 2010<sup>†</sup>**

**No. 47 of 2010**

[Assented to 24 August 2010]

**The Parliament of Victoria enacts:**

## **CHAPTER 1—PRELIMINARY**

### **1 Purposes**

- (1) The main purposes of this Act are—
  - (a) to reform and modernise the laws, practice, procedure and processes relating to the resolution of civil disputes which may lead to civil proceedings and to civil proceedings in the Supreme Court, the County Court and the Magistrates' Court and provide for uniformity;

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- (b) to simplify the language relating to civil procedure;
  - (c) to provide for an overarching purpose in relation to the conduct of civil proceedings to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute;
  - (d) to amend various Acts in relation to the conduct of civil proceedings to reflect the new procedures.
- (2) Without limiting subsection (1), this Act provides for—
- (a) overarching obligations for participants in civil proceedings to improve standards of conduct in litigation;
  - (b) the facilitation of the resolution of disputes before civil proceedings are commenced;
  - (c) the enhancement of case management powers of the courts, including in relation to discovery;
  - (d) further enhancement of appropriate dispute resolution processes;
  - (e) reform of the law relating to summary judgment;
  - (f) clarifying sanctions available to courts in relation to contravention of discovery obligations.

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## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 June 2011, it comes into operation on that day.

## 3 Definitions

In this Act—

***appropriate dispute resolution*** means a process attended, or participated in, by a person involved in a civil dispute or a party for the purposes of negotiating a settlement of the civil dispute or the civil proceeding or resolving or narrowing the issues in dispute, including, but not limited to—

- (a) mediation, whether or not referred to a mediator in accordance with rules of court;
- (b) early neutral evaluation;
- (c) judicial resolution conference;
- (d) settlement conference;
- (e) reference of a question, a civil proceeding or part of a civil proceeding to a special referee;
- (f) expert determination;
- (g) conciliation;
- (h) arbitration;

***civil dispute*** means a dispute which may result in the commencement of a civil proceeding;

***civil proceeding*** means any proceeding in a court other than a criminal proceeding or quasi-criminal proceeding;



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***court*** means the following courts—

- (a) the Supreme Court;
- (b) the County Court;
- (c) the Magistrates' Court;

***criminal proceeding*** means a proceeding to which the **Criminal Procedure Act 2009** applies and includes—

- (a) committal proceedings;
- (b) proceedings relating to bail;
- (c) proceedings relating to the sentencing of an accused;

***expert witness***, in relation to a civil proceeding, means a person who has specialised knowledge based on the person's training, study or experience;

***head of jurisdiction*** means—

- (a) in relation to the Supreme Court, the Chief Justice;
- (b) in relation to the County Court, the Chief Judge;
- (c) in relation to the Magistrates' Court, the Chief Magistrate;

***judicial officer*** means—

- (a) in relation to the Supreme Court, a Judge of the Court, an Associate Judge or a judicial registrar;
  - (b) in relation to the County Court, a judge of the court, an associate judge or a judicial registrar;
  - (c) in relation to the Magistrates' Court, a magistrate or a judicial registrar;
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*judicial registrar* means—

- (a) in relation to the Supreme Court, a judicial registrar within the meaning of the **Supreme Court Act 1986**;
- (b) in relation to the County Court, a judicial registrar within the meaning of the **County Court Act 1958**;
- (c) in relation to the Magistrates' Court, a judicial registrar within the meaning of the **Magistrates' Court Act 1989**;

*judicial resolution conference* means—

- (a) in relation to the Supreme Court, a resolution process presided over by a Judge of the Court, an Associate Judge or, in accordance with the rules of court, a judicial registrar for the purposes of negotiating a settlement of a dispute including, but not limited to—
  - (i) mediation, whether or not referred to that person in accordance with the rules of court;
  - (ii) early neutral evaluation;
  - (iii) settlement conference;
  - (iv) conciliation;
- (b) in relation to the County Court, a resolution process presided over by a judge, an associate judge or, in accordance with the rules of court, a judicial registrar for the purposes of negotiating a settlement of a dispute including, but not limited to—
  - (i) mediation, whether or not referred to that person in accordance with the rules of court;

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- (ii) early neutral evaluation;
  - (iii) settlement conference;
  - (iv) conciliation;
- (c) in relation to the Magistrates' Court, a resolution process presided over by a magistrate or, in accordance with the rules of court, a judicial registrar for the purposes of negotiating a settlement of a dispute including, but not limited to—
- (i) mediation, whether or not referred to that person in accordance with the rules of court;
  - (ii) early neutral evaluation;
  - (iii) settlement conference;
  - (iv) conciliation;

*law practice* has the same meaning as it has in the **Legal Profession Act 2004**;

*legal practitioner* means an *Australian legal practitioner* within the meaning of the **Legal Profession Act 2004**;

*overarching purpose* has the meaning given in section 7;

*overarching obligations* means the obligations set out in sections 16 to 26;

*overarching obligations certification* means the certification required under section 41;

*paramount duty* means the duty set out in section 16;

*party* means party to a civil proceeding;

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*penalty interest rate* means the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**;

*person* includes an unincorporated association, a firm and a partnership;

*pre-litigation requirements* means the requirements set out in section 34;

*pre-litigation requirements compliance certification* means the certification required under section 43;

*proper basis certification* means the certification required under section 42;

*substantive document* means—

- (a) an originating motion;
- (b) a writ that includes—
  - (i) a statement of claim; or
  - (ii) a statement sufficient to give, with reasonable particularity, notice of the nature of the claim, its cause and the relief or remedy sought;
- (c) a complaint;
- (d) a defence or a notice of defence;
- (e) a reply;
- (f) a counterclaim;
- (g) an answer to a counterclaim;
- (h) a response to an answer to a counterclaim;
- (i) a claim by third party notice;
- (j) a claim by fourth or subsequent party notice;

(k) an application brought in accordance with section 93(4)(d) of the **Transport Accident Act 1986**;

but does not include—

(l) a summons or an application initiating an interlocutory proceeding;

(m) an affidavit.

#### **4 Application of this Act**

(1) Subject to subsections (2) and (3), this Act applies to all civil proceedings.

(2) This Act does not apply to proceedings under the following Acts—

(a) the **Family Violence Protection Act 2008**;

(b) the **Stalking Intervention Orders Act 2008**;

(c) the **Confiscation Act 1997**;

(d) the Proceeds of Crime Act 1987 of the Commonwealth and the Proceeds of Crime Act 2002 of the Commonwealth;

(e) the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

(f) the **Children, Youth and Families Act 2005**;

(g) the **Coroners Act 2008**;

(h) the **Victims of Crime Assistance Act 1996**;

(i) the **Sentencing Act 1991**.

(3) This Act does not apply to any proceeding in VCAT.

#### **Note**

VCAT means the Tribunal under the **Victorian Civil and Administrative Tribunal Act 1998**.

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- (4) This Act does not apply to any proceeding under a prescribed Act.

**5 Act binds the Crown**

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

**6 Charter and privilege not overridden**

Nothing in this Act is intended to override—

- (a) the **Charter of Human Rights and Responsibilities Act 2006**; or
- (b) the doctrine of privilege, whether arising by or under the common law, statute or otherwise.
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## **CHAPTER 2—OVERARCHING PURPOSE AND OVERARCHING OBLIGATIONS**

### **PART 2.1—OVERARCHING PURPOSE**

#### **7 Overarching purpose**

- (1) The overarching purpose of this Act and the rules of court in relation to civil proceedings is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.
- (2) Without limiting how the overarching purpose is achieved, it may be achieved by—
  - (a) the determination of the proceeding by the court;
  - (b) agreement between the parties;
  - (c) any appropriate dispute resolution process—
    - (i) agreed to by the parties; or
    - (ii) ordered by the court.

#### **8 Court to give effect to overarching purpose**

- (1) A court must seek to give effect to the overarching purpose in the exercise of any of its powers, or in the interpretation of those powers, whether those powers—
  - (a) in the case of the Supreme Court, are part of the Court's inherent jurisdiction, implied jurisdiction or statutory jurisdiction; or
  - (b) in the case of a court other than the Supreme Court are part of the court's implied jurisdiction or statutory jurisdiction; or
  - (c) arise from or are derived from the common law or any procedural rules or practices of the court.

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- (2) Subsection (1) applies despite any other Act (other than the **Charter of Human Rights and Responsibilities Act 2006**) or law to the contrary.

**9 Court's powers to further the overarching purpose**

- (1) In making any order or giving any direction in a civil proceeding, a court shall further the overarching purpose by having regard to the following objects—
- (a) the just determination of the civil proceeding;
  - (b) the public interest in the early settlement of disputes by agreement between parties;
  - (c) the efficient conduct of the business of the court;
  - (d) the efficient use of judicial and administrative resources;
  - (e) minimising any delay between the commencement of a civil proceeding and its listing for trial beyond that reasonably required for any interlocutory steps that are necessary for—
    - (i) the fair and just determination of the real issues in dispute; and
    - (ii) the preparation of the case for trial;
  - (f) the timely determination of the civil proceeding;
  - (g) dealing with a civil proceeding in a manner proportionate to—
    - (i) the complexity or importance of the issues in dispute; and
    - (ii) the amount in dispute.
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- (2) For the purposes of subsection (1), the court may have regard to the following matters—
- (a) the extent to which the parties have complied with the pre-litigation requirements or any other mandatory or voluntary pre-litigation processes;
  - (b) the extent to which the parties have used reasonable endeavours to resolve the dispute by agreement or to limit the issues in dispute;
  - (c) the degree of promptness with which the parties have conducted the proceeding, including the degree to which each party has been timely in undertaking interlocutory steps in relation to the proceeding;
  - (d) the degree to which any lack of promptness by a party in undertaking the proceeding has arisen from circumstances beyond the control of that party;
  - (e) the degree to which each person to whom the overarching obligations apply has complied with the overarching obligations in relation to the proceeding;
  - (f) any prejudice that may be suffered by a party as a consequence of any order proposed to be made or direction proposed to be given by the court;
  - (g) the public importance of the issues in dispute and the desirability of a judicial determination of those issues;
  - (h) the extent to which the parties have had the benefit of legal advice and representation.
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- (3) This section does not—
- (a) limit any other power of a court to make orders or give directions; or
  - (b) preclude the court from considering any other matters when making any order or giving any direction.
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**PART 2.2—APPLICATION OF THE OVERARCHING  
OBLIGATIONS**

**10 Application of overarching obligations—  
participants**

- (1) The overarching obligations apply to—
  - (a) any person who is a party;
  - (b) any legal practitioner or other representative acting for or on behalf of a party;
  - (c) any law practice acting for or on behalf of a party;
  - (d) any person who provides financial assistance or other assistance to any party in so far as that person exercises any direct control, indirect control or any influence over the conduct of the civil proceeding or of a party in respect of that civil proceeding, including, but not limited to—
    - (i) an insurer;
    - (ii) a provider of funding or financial support, including any litigation funder.
- (2) Subject to subsection (3), the overarching obligations do not apply to any witness in a civil proceeding.
- (3) The overarching obligations (other than the overarching obligations specified in sections 18, 19, 22 and 26) apply to any expert witness in a civil proceeding.
- (4) Subsection (3) is in addition to, and not in derogation of, any existing duties applying to expert witnesses.

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**11 Application of overarching obligations—civil proceedings**

The overarching obligations apply in respect of the conduct of any aspect of a civil proceeding in a court, including, but not limited to—

- (a) any interlocutory application or interlocutory proceeding;
- (b) any appeal from an order or a judgment in a civil proceeding;
- (c) any appropriate dispute resolution undertaken in relation to a civil proceeding.

**12 Overarching obligations prevail over certain other obligations and duties**

Subject to the paramount duty, the overarching obligations prevail over any legal obligation, contractual obligation or other obligation which a person to whom the overarching obligations apply may have, to the extent that the obligations are inconsistent.

**13 Overarching obligations and legal practitioners**

- (1) The overarching obligations do not override any duty or obligation of a legal practitioner to a client, whether arising under the common law or by or under any statute or otherwise, to the extent that those duties and obligations and the overarching obligations can operate consistently.
- (2) Despite subsection (1), a legal practitioner or a law practice engaged by, or on behalf of, a client in connection with a civil proceeding must comply with the overarching obligations despite any obligation the legal practitioner or the law practice has to act in accordance with the instructions or wishes of the client.

- (3) In the case of any inconsistency between any overarching obligation and a duty or obligation referred to in subsection (1) or an instruction or a wish referred to in subsection (2)—
- (a) the overarching obligation prevails to the extent of that inconsistency; and
  - (b) in the case of the instruction or wish of a client, the legal practitioner is not required to comply with any instruction or wish of the client which is inconsistent with the overarching obligation.

**14 Legal practitioner or law practice not to cause client to contravene overarching obligations**

A legal practitioner or a law practice engaged by, or on behalf of, a client in connection with a civil proceeding must not by his, her or its conduct cause the client to contravene any overarching obligation.

**15 Legal practitioner's duty to court not overridden**

Nothing in this Part overrides any duty or obligation of a legal practitioner to the court, whether arising under the common law or by or under any statute or otherwise.

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**PART 2.3—THE OVERARCHING OBLIGATIONS**

**16 Paramount duty**

Each person to whom the overarching obligations apply has a paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that person is involved, including, but not limited to—

- (a) any interlocutory application or interlocutory proceeding;
- (b) any appeal from an order or a judgment in a civil proceeding;
- (c) any appropriate dispute resolution undertaken in relation to a civil proceeding.

**17 Overarching obligation to act honestly**

A person to whom the overarching obligations apply must act honestly at all times in relation to a civil proceeding.

**18 Overarching obligation—requirement of proper basis**

A person to whom the overarching obligations apply must not make any claim or make a response to any claim in a civil proceeding that—

- (a) is frivolous; or
- (b) is vexatious; or
- (c) is an abuse of process; or
- (d) does not, on the factual and legal material available to the person at the time of making the claim or responding to the claim, as the case requires, have a proper basis.

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**19 Overarching obligation to only take steps to resolve or determine dispute**

For the purpose of avoiding undue delay and expense, a person to whom the overarching obligations apply must not take any step in connection with any claim or response to any claim in a civil proceeding unless the person reasonably believes that the step is necessary to facilitate the resolution or determination of the proceeding.

**20 Overarching obligation to cooperate in the conduct of civil proceeding**

A person to whom the overarching obligations apply must cooperate with the parties to a civil proceeding and the court in connection with the conduct of that proceeding.

**21 Overarching obligation not to mislead or deceive**

A person to whom the overarching obligations apply must not, in respect of a civil proceeding, engage in conduct which is—

- (a) misleading or deceptive; or
- (b) likely to mislead or deceive.

**22 Overarching obligation to use reasonable endeavours to resolve dispute**

A person to whom the overarching obligations apply must use reasonable endeavours to resolve a dispute by agreement between the persons in dispute, including, if appropriate, by appropriate dispute resolution, unless—

- (a) it is not in the interests of justice to do so; or

- (b) the dispute is of such a nature that only judicial determination is appropriate.

**Example**

A proceeding where a civil penalty is sought may be of such a nature that only judicial determination is appropriate.

**23 Overarching obligation to narrow the issues in dispute**

If a person to whom the overarching obligations apply cannot resolve a dispute wholly by agreement, the person must use reasonable endeavours to—

- (a) resolve by agreement any issues in dispute which can be resolved in that way; and  
(b) narrow the scope of the remaining issues in dispute—

unless—

- (c) it is not in the interests of justice to do so; or  
(d) the dispute is of such a nature that only judicial determination is appropriate.

**24 Overarching obligation to ensure costs are reasonable and proportionate**

A person to whom the overarching obligations apply must use reasonable endeavours to ensure that legal costs and other costs incurred in connection with the civil proceeding are reasonable and proportionate to—

- (a) the complexity or importance of the issues in dispute; and  
(b) the amount in dispute.



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**25 Overarching obligation to minimise delay**

For the purpose of ensuring the prompt conduct of a civil proceeding, a person to whom the overarching obligations apply must use reasonable endeavours in connection with the civil proceeding to—

- (a) act promptly; and
- (b) minimise delay.

**26 Overarching obligation to disclose existence of documents**

(1) Subject to subsection (3), a person to whom the overarching obligations apply must disclose to each party the existence of all documents that are, or have been, in that person's possession, custody or control—

- (a) of which the person is aware; and
- (b) which the person considers, or ought reasonably consider, are critical to the resolution of the dispute.

(2) Disclosure under subsection (1) must occur at—

- (a) the earliest reasonable time after the person becomes aware of the existence of the document; or
- (b) such other time as a court may direct.

(3) Subsection (1) does not apply to any document which is protected from disclosure—

- (a) on the grounds of privilege which has not been expressly or impliedly waived; or
  - (b) under any Act (including any Commonwealth Act) or other law.
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- (4) The overarching obligation imposed by this section—
- (a) is an ongoing obligation for the duration of the civil proceeding; and
  - (b) does not limit or affect a party's obligations in relation to discovery.

**27 Protection and use of information and documents disclosed under overarching obligation in section 26**

- (1) A person who receives any information or documents provided by another person involved in the civil proceeding as a result of disclosure in compliance with the overarching obligation in section 26 is subject to an obligation not to use the information or documents, or permit the information or documents to be used, for a purpose other than in connection with the civil proceeding.
  - (2) The obligation under subsection (1) is taken to be an obligation to the court, contravention of which constitutes contempt of court.
  - (3) A person—
    - (a) may agree in writing to the use of information or documents otherwise protected under subsection (1); or
    - (b) may be released from the obligation imposed under subsection (1) by leave of the court.
  - (4) Without limiting this section or discovery in any civil proceeding any information or documents exchanged in compliance with the overarching obligation in section 26 is required to be discovered in the civil proceeding to be admissible in that proceeding.
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- (5) Nothing in this section limits any other undertaking to a court (implied or specific) whether at common law or otherwise, in relation to information or documents disclosed or discovered in a civil proceeding.
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**PART 2.4—SANCTIONS FOR CONTRAVENING THE  
OVERARCHING OBLIGATIONS**

**28 Court may take contravention of overarching  
obligations into account**

- (1) In exercising any power in relation to a civil proceeding, a court may take into account any contravention of the overarching obligations.
- (2) Without limiting subsection (1), in exercising its discretion as to costs, a court may take into account any contravention of the overarching obligations.

**29 Court may make certain orders**

- (1) If a court is satisfied that, on the balance of probabilities, a person has contravened any overarching obligation, the court may make any order it considers appropriate in the interests of justice including, but not limited to—
  - (a) an order that the person pay some or all of the legal costs or other costs or expenses of any person arising from the contravention of the overarching obligation;
  - (b) an order that the legal costs or other costs or expenses of any person be payable immediately and be enforceable immediately;
  - (c) an order that the person compensate any person for any financial loss or other loss which was materially contributed to by the contravention of the overarching obligation, including—
    - (i) an order for penalty interest in accordance with the penalty interest rate in respect of any delay in the

payment of an amount claimed in the civil proceeding; or

- (ii) an order for no interest or reduced interest;
  - (d) an order that the person take any steps specified in the order which are reasonably necessary to remedy any contravention of the overarching obligations by the person;
  - (e) an order that the person not be permitted to take specified steps in the civil proceeding;
  - (f) any other order that the court considers to be in the interests of any person who has been prejudicially affected by the contravention of the overarching obligations.
- (2) An order under this section may be made—
- (a) on the application of—
    - (i) any party to the civil proceeding; or
    - (ii) any other person who, in the opinion of the court, has a sufficient interest in the proceeding; or
  - (b) on the court's own motion.
- (3) This section does not limit any other power of a court to make any order, including any order as to costs.

### **30 Applications for orders under section 29**

- (1) An application for an order under section 29 is to be made—
- (a) in the court in which the civil proceeding was, or is being, heard; and
  - (b) in accordance with the rules of court.

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- (2) An application for an order under section 29 must be made prior to the finalisation of the civil proceeding to which the application relates (excluding any period for appeals).
  - (3) For the purposes of subsection (2), if an order, including an order in respect of costs, is made after the date of finalisation of the civil proceeding to which the application relates, the date of making of the last of the orders is taken to be the date of finalisation of that proceeding.

### **31 Extension of time for application**

- (1) Despite section 30(2), a person may apply to the court for an extension of time to apply for an order under section 29 after the finalisation of the civil proceeding.
  - (2) The court may grant an extension of time for making an application under section 29 if satisfied that the party making the application was not aware of the contravention of the overarching obligations until after the end of the period specified in section 30(2).
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## CHAPTER 3—BEFORE A CIVIL PROCEEDING COMMENCES

### PART 3.1—PRE-LITIGATION REQUIREMENTS

#### 32 Application of this Part and Part 3.2

- (1) This Part and Part 3.2 do not apply to—
- (a) a civil proceeding which is an appeal;
  - (b) a civil proceeding under section 33 or 39 of the **Charter of Human Rights and Responsibilities Act 2006**;
  - (c) any proceeding in which civil penalties under a civil penalty provision (however designated) of or under an Act (including a Commonwealth Act) are sought;
  - (d) a civil dispute which has been conducted in accordance with a pre-litigation process—
    - (i) subject to section 39, for claims made under Part 6 of the **Transport Accident Act 1986**;
    - (ii) for claims made under the **Accident Compensation Act 1985**;

#### Note

If a claim referred to in this paragraph is not conducted in accordance with a pre-litigation process, the civil dispute is not excepted from the application of this Part and Part 3.2.

- (e) a civil dispute to which the Corporations Act or the ASIC Act applies;
- (f) a civil dispute where a party is in dispute with a person who has been declared a vexatious litigant under section 21 of the **Supreme Court Act 1986**.

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- (2) This Part and Part 3.2 do not apply to any civil proceeding or class of civil proceeding if rules of court provide that the pre-litigation requirements do not apply to that proceeding or that class of proceeding.

**33 Compliance with pre-litigation requirements prior to commencement of civil proceedings**

- (1) Subject to subsection (2), each person involved in a civil dispute must comply with the pre-litigation requirements prior to the commencement of any civil proceeding in a court in relation to that dispute.
- (2) Subsection (1) applies to the commencement of a civil proceeding in a court on or after the day that is 6 months after the commencement of this Part.
- (3) Nothing in this section prevents a court exercising any power it has before the commencement of this Part in relation to the conduct of civil proceedings, including in relation to costs.

**34 Pre-litigation requirements**

- (1) Each person involved in a civil dispute must take reasonable steps, having regard to the person's situation and the nature of the dispute—
- (a) to resolve the dispute by agreement; or
  - (b) to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.
- (2) For the purposes of this section, reasonable steps include, but are not limited to—
- (a) the exchange of appropriate pre-litigation correspondence, information and documents critical to the resolution of the dispute;



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- (b) the consideration of options for resolving the dispute without the need for civil proceedings in a court, including, but not limited to resolution through genuine and reasonable negotiations or appropriate dispute resolution.
  - (3) Each person involved in a civil dispute must not unreasonably refuse to participate in genuine and reasonable negotiations or appropriate dispute resolution.

**35 Protection and use of information and documents disclosed under pre-litigation requirements**

- (1) A person involved in a civil dispute who receives any information or documents provided by another person involved in a civil dispute in accordance with the pre-litigation requirements is subject to an obligation not to use the information or documents, or permit the information or documents to be used, for a purpose other than in connection with—
    - (a) the resolution of the civil dispute between the persons involved in the civil dispute; or
    - (b) any civil proceeding arising out of the civil dispute.
  - (2) The obligation under subsection (1) is taken to be an obligation to the court, contravention of which constitutes contempt of court.
  - (3) A person involved in a civil dispute or a party—
    - (a) may agree in writing to the use of information or documents otherwise protected under subsection (1); or
    - (b) may be released from the obligation imposed under subsection (1) by leave of the court.
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- (4) Without limiting this section or discovery in any civil proceeding any documents exchanged in accordance with the pre-litigation requirements—
- (a) are required to be discovered in any subsequent civil proceeding to be admissible in that proceeding; and
  - (b) may be available for use in any subsequent civil proceeding accordingly.
- (5) Nothing in this section limits any other undertaking to a court (implied or specific) whether at common law or otherwise, in relation to information or documents disclosed or discovered in a civil proceeding.

**36 Proceedings may be commenced despite noncompliance**

Unless a court otherwise orders or rules of court otherwise provide, a court may not prevent the commencement of civil proceedings in the court merely because of noncompliance with the pre-litigation requirements.

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**PART 3.2—SANCTIONS ENFORCING THE  
PRE-LITIGATION REQUIREMENTS**

**37 Persons generally to bear own costs of compliance  
with pre-litigation requirements**

Subject to this Part, each person involved in a civil dispute or each party to a civil proceeding is to bear that person's or party's own costs of compliance with the pre-litigation requirements, unless the rules of court otherwise provide.

**38 Court may make orders as to costs of compliance  
with pre-litigation requirements**

- (1) Despite section 37, a court may order that a party to a civil proceeding pay all or a specific part of another party's costs of compliance with the pre-litigation requirements if satisfied that it is reasonable to do so, having regard to furthering the overarching purpose.
  - (2) Despite section 37, a court may order that a representative of a party to a civil proceeding, rather than the party, in the representative's own capacity, pay all or a specific part of another party's costs of compliance with the pre-litigation requirements if the court is satisfied that, by the representative's conduct in relation to compliance with the pre-litigation requirements, another party has unnecessarily incurred costs in complying with the pre-litigation requirements.
  - (3) In making an order under this section, a court may order—
    - (a) that the costs be taxed, assessed, settled or reviewed by the Costs Court;
    - (b) that the costs be payable immediately and be enforceable immediately.
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- (4) A court may make an order under this section—
- (a) of its own motion; or
  - (b) on the application of any party to the civil proceeding.

**39 Court may take failure to comply with pre-litigation requirements or pre-litigation process into account**

- (1) If a court is satisfied that a party to a civil proceeding has failed to comply with the pre-litigation requirements, or a pre-litigation process for a claim made under Part 6 of the **Transport Accident Act 1986**, the court may take into account that failure—
- (a) in determining costs in the proceeding generally;
  - (b) in making any order about the procedural obligations of parties to the civil proceeding;
  - (c) in making any other order it considers appropriate.
- (2) A court may make an order under subsection (1)—
- (a) of its own motion; or
  - (b) on the application of any party to the civil proceeding.

**40 Scales of fees and scales of costs**

For the purposes of Part 3.1 and this Part, scales of fees or scales of costs in relation to compliance with the pre-litigation requirements may be fixed—

- (a) by regulations; or
  - (b) by rules of court.
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## **CHAPTER 4—COMMENCEMENT AND CONDUCT OF CIVIL PROCEEDINGS**

### **PART 4.1—CERTIFICATION REQUIREMENTS ON COMMENCEMENT OF CIVIL PROCEEDINGS**

#### **41 Overarching obligations certification by parties on commencement of civil proceeding**

- (1) Each party must personally certify that the party has read and understood the overarching obligations and the paramount duty.
- (2) The overarching obligations certification must be—
  - (a) filed with the first substantive document in the civil proceeding filed by the party; and
  - (b) otherwise in accordance with the rules of court.
- (3) Despite subsection (1), if a party is represented by a litigation guardian or similar representative, the litigation guardian or similar representative may make the overarching obligations certification.

#### **42 Proper basis certification**

- (1) On the filing of a party's first substantive document in a civil proceeding and any document that contains significant amendments to the first substantive document, a legal practitioner acting for or on behalf of a party to the proceeding must certify that, on the factual and legal material available—
  - (a) each allegation of fact in the document has a proper basis;
  - (b) each denial in the document has a proper basis;

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- (c) there is a proper basis for each non-admission in the document.
  - (2) A proper basis certification must be in accordance with the rules of court.
  - (3) For the purposes of this section, a determination by a legal practitioner—
    - (a) as to whether any allegation or denial of fact has a proper basis, on the factual and legal material available, must be based on a reasonable belief as to the truth or untruth of the allegation or denial; or
    - (b) as to the proper basis of any non-admission is that the legal practitioner does not know, and therefore cannot say, whether a fact alleged or denial is true or untrue.
  - (4) If a party is not represented by a legal practitioner—
    - (a) the proper basis certification must be completed personally by that party; and
    - (b) a reference in this section to "legal practitioner" is to be construed as a reference to that party.

**43 Pre-litigation requirements compliance certification by parties or legal practitioner**

- (1) Each party to a civil proceeding to which Part 3.1 of Chapter 3 applies, or that party's legal practitioner, must certify whether the pre-litigation requirements have been complied with.
- (2) If the pre-litigation requirements set out in section 34(1) and (2) have not been undertaken by the certifying party, the pre-litigation requirements compliance certification must set out briefly the reasons why those requirements have not been undertaken.

- (3) The pre-litigation requirements compliance certification must be—
- (a) in writing; and
  - (b) filed with the first substantive document filed by the party; and
  - (c) otherwise in accordance with the rules of court.

#### **44 Urgent filing of documents and certification**

- (1) Despite the requirements of this Part, if as a matter of urgency a document is required to be filed in a civil proceeding, a party to the proceeding or a legal practitioner acting for or on behalf of a party to the proceeding may file the document without complying with the applicable certification provision of this Part.

##### **Examples**

A document needs to be filed to comply with a limitation period which is about to expire and it is not possible for a party to the proceeding to give certification before the time limit expires. Other examples include freezing orders, search orders and urgent interlocutory applications.

- (2) If subsection (1) applies, the person must file the relevant certification in compliance with the relevant section as soon as practicable after filing the document.

#### **45 Proceedings may be commenced despite failure to certify**

Unless a court otherwise orders, a court may not prevent the commencement of civil proceedings in the court merely because of a failure to comply with any certification requirement under this Part.

**46 Court may take failure to comply into account**

A court may take into account any failure by a person to comply with any certification requirement under this Part—

- (a) in determining costs in the proceeding generally;
  - (b) in making any order about the procedural obligations of parties to the civil proceeding;
  - (c) in making any other order it considers appropriate.
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**PART 4.2—CASE MANAGEMENT**

**47 Judicial powers of case management—overarching purpose and active case management**

- (1) Without limiting any other power of a court, for the purposes of ensuring that a civil proceeding is managed and conducted in accordance with the overarching purpose, the court may give any direction or make any order it considers appropriate, including any directions given or orders made—
    - (a) in the interests of the administration of justice; or
    - (b) in the public interest.
  - (2) A direction given or an order made under subsection (1) may include, but is not limited to, imposing any reasonable limits, restrictions or conditions in respect of—
    - (a) the management and conduct of any aspect of a civil proceeding; or
    - (b) the conduct of any party.
  - (3) Without limiting subsection (1) or (2), a court may actively case manage civil proceedings by—
    - (a) giving directions to ensure that the civil proceeding is conducted promptly and efficiently;
    - (b) identifying at an early stage the issues involved in the civil proceeding, including any issues that have not been resolved in accordance with the pre-litigation requirements;
    - (c) deciding the order in which the issues in dispute in the civil proceeding are to be resolved including—
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- (i) deciding promptly which issues need full investigation and a hearing; and
  - (ii) disposing summarily of other issues;
  - (d) encouraging the parties—
    - (i) to co-operate with each other in the conduct of the civil proceedings;
    - (ii) to settle the whole or part of the civil proceedings;
    - (iii) to use appropriate dispute resolution;
  - (e) controlling the progress of the civil proceeding, including, but not limited to—
    - (i) fixing timetables;
    - (ii) dealing with as many aspects of a civil proceeding as it can on the same occasion;
    - (iii) dealing with the civil proceeding without the parties needing to attend court;
    - (iv) making use of technology;
  - (f) limiting the time for the hearing or any other part of a civil proceeding, including, but not limited to—
    - (i) limiting the number of witnesses at the hearing;
    - (ii) limiting the time for the examination or cross-examination of any witness;
    - (iii) limiting the issues or matters that may be the subject of examination or cross-examination;
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- (g) considering whether the likely benefits of taking a particular step in a civil proceeding justify the cost of taking it.

**48 Court's power to order and direct pre-trial procedures**

- (1) In addition to any other power a court may have, a court may make any order or give any direction it considers appropriate to further the overarching purpose in relation to pre-trial procedures.
- (2) Without limiting subsection (1), a court may give any directions or make any orders it considers appropriate with respect to—
  - (a) the conduct of proceedings;
  - (b) timetables or timelines for any matters to be dealt with, including—
    - (i) the conduct of any hearing; and
    - (ii) the time within which specified steps in a civil proceeding must be completed;
  - (c) the use of appropriate dispute resolution to assist in the conduct and resolution of all or part of the civil proceedings;
  - (d) the attendance of parties and legal practitioners at a case management conference with a judicial officer to consider the most cost effective and efficient means of bringing the civil proceeding to trial and of conducting the civil proceeding, including giving further directions;
  - (e) defining issues by pleadings or otherwise, including requiring parties or their legal practitioners to exchange memoranda, or take other steps to clarify questions;

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- (f) the attendance of parties or their practitioners before a judicial officer for a conference for the purposes of—
- (i) satisfying the judicial officer that all reasonable steps to achieve resolution of the issues in dispute have been taken; or
  - (ii) otherwise clarifying the real issues in dispute to enable appropriate directions to be given for the further conduct of the dispute or civil proceeding; or
  - (iii) otherwise shortening the time taken in preparation for the trial and at the trial;
- (g) any other matter specified in rules of court.

**49 Court's power to order and direct trial procedures and conduct of hearing**

- (1) In addition to any other power a court may have, a court may give any direction or make any order it considers appropriate to further the overarching purpose in relation to the conduct of the hearing in a civil proceeding.
- (2) A direction or an order under subsection (1) may be given or made by the court at any time—
- (a) before a hearing commences; or
  - (b) during a hearing.
- (3) Without limiting subsection (1), a court may give any direction or make any order it considers appropriate with respect to—
- (a) the order in which evidence is to be given and addresses made;
  - (b) the order in which questions of fact are to be tried;

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- (c) limiting the time to be taken by a trial, including the time a party may take to present the party's case;
  - (d) witnesses, including—
    - (i) limiting the time to be taken in examining, cross-examining or re-examining witnesses;
    - (ii) not allowing cross-examination of particular witnesses;
    - (iii) limiting the number of witnesses, including expert witnesses, that a party may call;
  - (e) limiting the issues or matters that may be the subject of examination or cross-examination;
  - (f) limiting the length or duration of written and oral submissions;
  - (g) limiting the numbers of documents to be prepared or that a party may tender in evidence;
  - (h) the preparation by the parties of an agreed bundle of documents for use in the proceeding or a schedule summarising business records or other documents;
  - (i) the place, time and mode of trial;
  - (j) evidence, including, but not limited to whether evidence in chief should be given orally, by affidavit or by witness statement;
  - (k) costs, including the proportions in which the parties are to bear any costs;
  - (l) any other matter specified in rules of court.
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**50 Order to legal practitioner as to length and costs of trial etc.**

- (1) A court may make an order directing a legal practitioner acting for a party—
  - (a) to prepare a memorandum setting out—
    - (i) the estimated length of the trial; and
    - (ii) the estimated costs and disbursements in relation to the trial; and
    - (iii) in the case of a memorandum to be given to a party, the estimated costs that that party would have to pay to any other party if the party is unsuccessful at trial; and
  - (b) to give the memorandum, as specified in the order to—
    - (i) the court; or
    - (ii) a party; or
    - (iii) both the court and any party.
- (2) An order under subsection (1) may be made at any time in a civil proceeding.

**51 Contravention of orders or directions under this Part**

If a person to whom a direction has been given or to whom an order made under this Part applies contravenes the direction or order, the court may do any one or more of the following—

- (a) dismiss the civil proceeding, whether—
    - (i) generally; or
    - (ii) in relation to a particular cause of action; or
    - (iii) in relation to the whole or part of a particular claim;
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- (b) strike out or limit any claim made by a plaintiff;
  - (c) strike out or limit any defence or part of a defence filed by a defendant, and give judgment accordingly;
  - (d) strike out or amend any document filed by the person, either in whole or in part;
  - (e) disallow or reject any evidence that the person has adduced or seeks to adduce;
  - (f) direct the person to pay the whole or part of the costs of another party or person;
  - (g) make any other order or give any other direction that the court considers appropriate.

**52 Court may revoke or vary direction or order**

A court may revoke or vary any direction or order made by it under this Part.

**53 Interaction with other powers of court**

- (1) Nothing in this Part limits any other power a court may have—
  - (a) to take action of the kind referred to in this Part; or
  - (b) to take any other action that the court is empowered to take in relation to a contravention of a direction given or order made by the court.
- (2) Nothing in this Part limits—
  - (a) in the case of the Supreme Court, the Court's inherent jurisdiction, implied jurisdiction or statutory jurisdiction; or
  - (b) in the case of a court other than the Supreme Court, the court's implied jurisdiction or statutory jurisdiction; or

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- (c) any other powers of a court arising or derived from the common law or under any other Act (including any Commonwealth Act), rule of court, practice note or practice direction.
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**PART 4.3—DISCLOSURE AND DISCOVERY**

**54 Discovery of documents to be in accordance with rules of court**

Unless a court otherwise orders, discovery of documents in a civil proceeding is to be in accordance with the rules of court.

**55 Court orders for discovery**

- (1) A court may make any order or give any directions in relation to discovery that it considers necessary or appropriate.
- (2) Without limiting subsection (1), a court may make any order or give any directions—
  - (a) requiring a party to make discovery to another party of—
    - (i) any documents within a class or classes specified in the order; or
    - (ii) one or more samples of documents within a class or classes, selected in any manner which the court specifies in the order;
  - (b) relieving a party from the obligation to provide discovery;
  - (c) limiting the obligation of discovery to—
    - (i) a class or classes of documents specified in the order; or
    - (ii) documents relating to one or more specified facts or issues in dispute;
  - (d) that discovery occur in separate stages;
  - (e) requiring discovery of specified classes of documents prior to the close of pleadings;

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- (f) expanding a party's obligation to provide discovery;
  - (g) requiring a list of documents be indexed or arranged in a particular way;
  - (h) requiring discovery or inspection of documents to be provided by a specific time;
  - (i) as to which parties are to be provided with inspection of documents by another party;
  - (j) relieving a party of the obligation to provide an affidavit of documents;
  - (k) modifying or regulating discovery of documents in any other way the court thinks fit.
- (3) A court may make any order or give any directions requiring a party discovering documents to—
- (a) provide facilities for the inspection and copying of the documents, including copying and computerised facilities;
  - (b) make available a person who is able to—
    - (i) explain the way the documents are arranged; and
    - (ii) help locate and identify particular documents or classes of documents.

#### **56 Court may order sanctions**

- (1) A court may make any order or give any direction it considers appropriate if the court finds that there has been—
- (a) a failure to comply with discovery obligations; or
  - (b) a failure to comply with any order or direction of the court in relation to discovery; or
- or

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- (c) conduct intended to delay, frustrate or avoid discovery of discoverable documents.
- (2) Without limiting subsection (1), a court may make an order or give directions—
- (a) that proceedings for contempt of court be initiated;
  - (b) adjourning the civil proceeding, with costs of that adjournment to be borne by the person responsible for the need to adjourn the proceeding;
  - (c) in respect of costs in the civil proceeding, including indemnity cost orders against any party or a legal practitioner who is responsible for, or who aids and abets, any conduct referred to in subsection (1);
  - (d) preventing a party from taking any step in the civil proceeding;
  - (e) prohibiting or limiting the use of documents in evidence;
  - (f) in respect of facts taken as established for the purposes of the civil proceeding;
  - (g) awarding compensation for financial or other loss arising out of any conduct referred to in subsection (1);
  - (h) in respect of any adverse inference arising from any conduct referred to in subsection (1);
  - (i) compelling any person to give evidence in connection with any conduct referred to in subsection (1), including by way of affidavit;
  - (j) dismissing any part of the claim or defence of a party who is responsible for any conduct referred to in subsection (1);
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- (k) in relation to the referral to an appropriate disciplinary authority for disciplinary action to be taken against any legal practitioner who is responsible for, or who aids and abets, any conduct referred to in subsection (1).

**57 Cross-examination regarding discovery obligations**

Unless a court orders otherwise, any party to a civil proceeding may cross-examine or seek leave to conduct an oral examination of the deponent of an affidavit of documents prepared by or on behalf of any other party to that proceeding if there is a reasonable basis for the belief that the other party may be—

- (a) misinterpreting the party's discovery obligations; or
- (b) failing to disclose discoverable documents.

**58 Interaction with Evidence (Miscellaneous Provisions) Act 1958**

Nothing in this Part derogates from the operation of Division 9 of Part III of the **Evidence (Miscellaneous Provisions) Act 1958**.

**59 Interaction with rules of court**

The powers of a court under this Part are in addition to, and do not derogate from, any powers a court has under rules of court in relation to discovery or disclosure of documents.

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**PART 4.4—SUMMARY JUDGMENT**

**60 References to defendant and plaintiff in this Part**

In this Part, a reference—

- (a) to a plaintiff includes a reference to a plaintiff by counterclaim; and
- (b) to a defendant includes a reference to a defendant by counterclaim.

**61 Plaintiff may apply for summary judgment in proceeding**

A plaintiff in a civil proceeding may apply to the court for summary judgment in the proceeding on the ground that a defendant's defence or part of that defence has no real prospect of success.

**62 Defendant may apply for summary judgment in proceeding**

A defendant in a civil proceeding may apply to the court for summary judgment in the proceeding on the ground that a plaintiff's claim or part of that claim has no real prospect of success.

**63 Summary judgment if no real prospect of success**

- (1) Subject to section 64, a court may give summary judgment in any civil proceeding if satisfied that a claim, a defence or a counterclaim or part of the claim, defence or counterclaim, as the case requires, has no real prospect of success.
- (2) A court may give summary judgment in any civil proceeding under subsection (1)—
  - (a) on the application of a plaintiff in a civil proceeding;
  - (b) on the application of a defendant in a civil proceeding;

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- (c) on the court's own motion, if satisfied that it is desirable to summarily dispose of the civil proceeding.

**64 Court may allow a matter to proceed to trial**

Despite anything to the contrary in this Part or any rules of court, a court may order that a civil proceeding proceed to trial if the court is satisfied that, despite there being no real prospect of success the civil proceeding should not be disposed of summarily because—

- (a) it is not in the interests of justice to do so; or  
(b) the dispute is of such a nature that only a full hearing on the merits is appropriate.

**65 Interaction with rules of court**

The powers of a court under this Part are in addition to, and do not derogate from, any powers a court has under rules of court in relation to summary disposal of any civil proceeding.

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**CHAPTER 5—APPROPRIATE DISPUTE  
RESOLUTION**

**66 Court may order proceeding to appropriate dispute resolution**

- (1) A court may make an order referring a civil proceeding, or part of a civil proceeding, to appropriate dispute resolution.
- (2) Subject to any rules of court, an order under subsection (1) may be made without the consent of the parties if the type of appropriate dispute resolution to which the civil proceeding or part of the civil proceeding is referred is not—
  - (a) arbitration; or
  - (b) reference to a special referee; or
  - (c) expert determination; or
  - (d) any other type of appropriate dispute resolution which results, directly or indirectly, in a binding outcome.
- (3) An order under subsection (1) may be made at any stage in the proceeding.

**67 Evidence of things said and done in appropriate dispute resolution which is judicial resolution conference**

If a court orders that a judicial resolution conference be conducted in relation to a civil proceeding, no evidence shall be admitted at the hearing of any proceeding of anything said or done by any person in the course of the conduct of the judicial resolution conference unless the court otherwise orders, having regard to the interests of justice and fairness.

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**68 Protection of conduct of judicial resolution conference**

- (1) Without limiting any other law, whether written or unwritten, a judicial officer performing duties in connection with any judicial resolution conference has the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.
- (2) Without limiting section 16 of the **Evidence Act 2008**, a judicial officer is not compellable to give evidence in any proceeding, whether civil or criminal, of anything said or done or arising from the conduct of a judicial resolution conference.

**Note**

See also sections 24A and 27A of the **Supreme Court Act 1986**, sections 47B and 48C of the **County Court Act 1958** and sections 108 and 108A of the **Magistrates' Court Act 1989**.

**69 Interaction with other Acts and rules of court**

The powers of a court under this Chapter are in addition to, and do not derogate from, any powers a court has under any other Act (including any Commonwealth Act) or the rules of court in relation to appropriate dispute resolution.

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## CHAPTER 6—GENERAL

### PART 6.1—RULES OF COURT AND REGULATIONS

#### 70 Rules of court

- (1) Without limiting any other power to make rules of court, rules of court made by the authority having for the time being power to make rules regulating the practice and procedure of a court may include rules for or with respect to—
  - (a) the overarching purpose and the overarching obligations;
  - (b) the pre-litigation requirements, including—
    - (i) recovery of costs of compliance with Chapter 3;
    - (ii) practice and procedures relating to the pre-litigation requirements;
    - (iii) application of pre-litigation requirements to civil proceedings or classes of civil proceeding;
    - (iv) exempting civil proceedings or classes of civil proceeding from compliance with pre-litigation requirements;
    - (v) protection and use of documents or information exchanged in accordance with pre-litigation requirements;
  - (c) pre-litigation requirements other than those under Chapter 3, including specific protocols for civil proceedings or classes of civil proceeding;
  - (d) discovery;
  - (e) disclosure;

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- (f) appropriate dispute resolution and procedure, including referral to appropriate dispute resolution with or without the consent of the parties;
  - (g) any other matter for which provision may be made under this Act by rules of court.
- (2) Rules of court made under this Act may regulate generally the practice and procedure under this Act.

### **71 Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
- (a) be of general or limited application; and
  - (b) differ according to differences in time, place or circumstances; and
  - (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies; and
  - (d) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person; and
  - (e) provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
    - (i) whether unconditionally or on specified conditions; and
    - (ii) either wholly or to any extent that is specified;
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- (f) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any other person, whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
    - (iii) as formulated, issued, prescribed or published from time to time.
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**PART 6.2—TRANSITIONAL PROVISIONS**

**72 Overarching purpose**

- (1) The overarching purpose applies in relation to all civil proceedings commenced on or after the commencement of Part 2.1 of Chapter 2.
- (2) If a civil proceeding has commenced before the commencement of Part 2.1 of Chapter 2, on and from the commencement of that Part, the overarching purpose applies in relation to that proceeding.

**73 Overarching obligations**

- (1) The overarching obligations apply in relation to all civil proceedings commenced on or after the commencement of Parts 2.2 to 2.4 of Chapter 2.
- (2) If a civil proceeding has commenced before the commencement of Parts 2.2 to 2.4 of Chapter 2 but the court has not begun to hear and determine that proceeding, on and from the commencement of that Part, the overarching obligations apply in relation to that proceeding.
- (3) If a civil proceeding has commenced before the commencement of Parts 2.2 to 2.4 of Chapter 2 and the court has begun to hear and determine that proceeding before the commencement of that Part, the overarching obligations do not apply in relation to that proceeding.

**74 Case management powers**

- (1) Part 4.2 of Chapter 4 applies in relation to all civil proceedings commenced on or after the commencement of that Part.

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- (2) If a civil proceeding has commenced before the commencement of Part 4.2 of Chapter 4, on and from the commencement of that Part, that Part applies in relation to that proceeding.

**75 Disclosure and discovery**

- (1) Part 4.3 of Chapter 4 applies in relation to all civil proceedings commenced on or after the commencement of that Part.
- (2) If a civil proceeding has commenced before the commencement of Part 4.3 of Chapter 4, on and from the commencement of that Part, that Part applies in relation to that proceeding.

**76 Summary judgment**

- (1) Part 4.4 of Chapter 4 applies in relation to all civil proceedings commenced on or after the commencement of that Part.
- (2) If a civil proceeding has commenced before the commencement of Part 4.4 of Chapter 4 but the court has not begun to hear and determine that proceeding, on and from the commencement of that Part, that Part applies in relation to that proceeding.

**77 Appropriate dispute resolution**

- (1) Chapter 5 applies in relation to all civil proceedings commenced on or after the commencement of that Chapter.
- (2) If a civil proceeding has commenced before the commencement of Chapter 5, on and from the commencement of Chapter 5, that Chapter applies in relation to that proceeding.

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**78 Power to resolve transitional difficulties in civil proceedings**

- (1) If any difficulty arises because of the operation of this Part in relation to a civil proceeding to which this Part applies, a court may make any order it considers appropriate to resolve the difficulty.
- (2) An order made under subsection (1)—
  - (a) may be made on application of a party to the proceeding or on the court's own motion, as the case requires; and
  - (b) has effect despite any provision to the contrary made by or under any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**).

**79 Regulations dealing with transitional matters**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act.
  - (2) Regulations made under this section may—
    - (a) have a retrospective effect to a day on or from the date that this Act receives the Royal Assent; and
    - (b) be of limited or general application; and
    - (c) leave any matter or thing to be decided by a specified person or specified class of persons; and
    - (d) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
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- (3) Regulations made under this section have effect despite anything to the contrary—
- (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
  - (b) in any subordinate instrument.
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**PART 6.3—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

**Division 1—Amendments to Supreme Court Act 1986**

**80 Definitions**

In section 3(1) of the **Supreme Court Act 1986**—

- (a) for the definition of *judicial resolution conference substitute*—

*"judicial resolution conference* has the same meaning as it has in the **Civil Procedure Act 2010**";

- (b) **insert** the following definition—

*"appropriate dispute resolution* has the same meaning as it has in the **Civil Procedure Act 2010**";

See:  
Act No.  
110/1986.  
Reprint No. 6  
as at  
28 April 2006  
and  
amending  
Act Nos  
48/2006,  
24/2007,  
8/2008, 9/2008,  
23/2008,  
24/2008,  
78/2008,  
4/2009, 9/2009,  
50/2009,  
68/2009,  
69/2009,  
11/2010 and  
30/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

**81 Mediation and judicial resolution conference**

- (1) Division 3A of Part 2 of the **Supreme Court Act 1986** is **repealed**.
- (2) In section 27A of the **Supreme Court Act 1986** after "the Rules" **insert** "or under the **Civil Procedure Act 2010**".



## 82 Power to make Rules

In section 25(1) of the **Supreme Court Act 1986**—

(a) after paragraph (a) **insert**—

"(ab) furthering the overarching purpose set out in the **Civil Procedure Act 2010** and the conduct of civil proceedings in accordance with the principles set out in that Act, including the overarching obligations;

(ac) the conduct of proceedings and parties to proceedings generally, including, but not limited to, the imposition of limits, restrictions or conditions on any party in respect of any aspect of the conduct of proceedings;

(ad) case management;

(ae) any other matter or thing required or permitted by or under the **Civil Procedure Act 2010** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;"

(b) after paragraph (eab) **insert**—

"(eac) without limiting paragraphs (ea) and (eab), the referral, direction or ordering of parties to a proceeding to any form of appropriate dispute resolution, whether with or without consent of the parties;"

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**Division 2—Amendments to County Court Act 1958**

**83 Definitions**

In section 3(1) of the **County Court Act 1958**—

- (a) for the definition of *judicial resolution conference* substitute—

*"judicial resolution conference* has the same meaning as it has in the **Civil Procedure Act 2010**";

- (b) **insert** the following definition—

*"appropriate dispute resolution* has the same meaning as it has in the **Civil Procedure Act 2010**";

See:  
Act No.  
6230.  
Reprint No. 13  
as at  
15 January  
2009  
and  
amending  
Act Nos  
8/2008,  
78/2008,  
4/2009, 9/2009,  
38/2009,  
50/2009,  
68/2009,  
69/2009,  
1/2010,  
29/2010 and  
30/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

**84 Mediation and judicial resolution conference**

- (1) Division 4 of Part II of the **County Court Act 1958** is repealed.
- (2) In section 47A of the **County Court Act 1958** after "rules" **insert** "or the **Civil Procedure Act 2010**".

**85 Protection of special referees, mediators and arbitrators**

In section 48C of the **County Court Act 1958** after "the Rules" **insert** "or under the **Civil Procedure Act 2010**".

**86 New section 48D inserted**

After section 48C of the **County Court Act 1958**  
**insert—**

**"48D Interaction with Civil Procedure Act 2010**

The powers of the Court under this Division  
are in addition to, and do not derogate from,  
the powers of a court under Chapter 5 of the  
**Civil Procedure Act 2010**."

**87 Power to make rules of practice**

In section 78(1) of the **County Court Act 1958—**

(a) before paragraph (a) **insert—**

"(aaa) furthering the overarching purpose set  
out in the **Civil Procedure Act 2010**  
and the conduct of civil proceedings in  
accordance with the principles set out  
in that Act, including the overarching  
obligations;

(aab) the conduct of civil proceedings and  
parties to civil proceedings generally,  
including, but not limited to, the  
imposition of limits, restrictions or  
conditions on any party in respect of  
any aspect of the conduct of civil  
proceedings;

(aac) case management;

(aad) any other matter or thing required or  
permitted by or under the **Civil  
Procedure Act 2010** to be dealt with  
by rules of court or otherwise necessary  
or required for the purposes of that  
Act;"

(b) after paragraph (hcb) **insert**—

"(hcc) without limiting paragraphs (hca) and (hcb), the referral, direction or ordering of parties to a civil proceeding to any form of appropriate dispute resolution, whether with or without the consent of the parties;"

### Division 3—Amendments to Magistrates' Court Act 1989

#### 88 Definitions

In section 3(1) of the **Magistrates' Court Act 1989**—

(a) for the definition of *judicial resolution conference substitute*—

"*judicial resolution conference* has the same meaning as it has in the **Civil Procedure Act 2010**";

(b) **insert** the following definition—

"*appropriate dispute resolution* has the same meaning as it has in the **Civil Procedure Act 2010**";

See:  
Act No.  
51/1989.  
Reprint No. 15  
as at  
5 April 2010  
and  
amending  
Act Nos  
51/2006,  
52/2008,  
12/2010,  
29/2010 and  
30/2010.  
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vic.gov.au

#### 89 Rules of Court

In section 16(1) of the **Magistrates' Court Act 1989**—

(a) after paragraph (a) **insert**—

"(ab) furthering the overarching purpose set out in the **Civil Procedure Act 2010** and the conduct of civil proceedings in accordance with the principles set out in that Act, including the overarching obligations;

- (ac) the conduct of civil proceedings and parties to civil proceedings generally, including, but not limited to, the imposition of limits, restrictions or conditions on any party in respect of any aspect of the conduct of civil proceedings;
  - (ad) case management;
  - (ae) any other matter or thing required or permitted by or under the **Civil Procedure Act 2010** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;"
- (b) after paragraph (fc) **insert**—
- "(fd) without limiting paragraphs (fa), (fb) and (fc), the referral, direction or ordering of parties to a civil proceeding to any form of appropriate dispute resolution, whether with or without the consent of the parties;"

**90 New section 106A inserted**

After section 106 of the **Magistrates' Court Act 1989** **insert**—

**"106A Interaction with Civil Procedure Act 2010**

The powers of the Court under this Division are in addition to, and do not derogate from, the powers of a court under Chapter 5 of the **Civil Procedure Act 2010**."

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**91 New section 107A inserted**

After section 107 of the **Magistrates' Court Act 1989** insert—

**"107A Interaction with Civil Procedure Act 2010**

The powers of the Court under this Division are in addition to, and do not derogate from, the powers of a court under the **Civil Procedure Act 2010**".

**92 Mediation and judicial resolution conference**

- (1) In section 108(1) of the **Magistrates' Court Act 1989** after "Rules" insert "or the **Civil Procedure Act 2010**".
- (2) In section 108A of the **Magistrates' Court Act 1989** after "been referred" insert "(whether by or under this Act, the Rules or under the **Civil Procedure Act 2010**)".
- (3) Division 3B of Part 5 of the **Magistrates' Court Act 1989** is repealed.

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## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly: 24 June 2010*

*Legislative Council: 29 July 2010*

The long title for the Bill for this Act was "A Bill for an Act to provide for the reform and modernisation of the laws, practice, procedure and processes for the resolution of civil disputes which may lead to civil proceedings and for the initiation and conduct of civil proceedings and appeals, to amend the **Supreme Court Act 1986**, the **County Court Act 1958** and the **Magistrates' Court Act 1989** and other Acts and for other purposes."

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