

New Procedural Rules for Civil Litigation in Victoria (Civil Procedure Act 2010)

The Civil Procedure Act 2010 ("the Act") came into force with respect to most of its provisions on 1 January 2011.

The act seeks to reform the practices and procedures with respect to civil disputes which may lead to court actions in the Supreme, County and Magistrates Courts.

The laudatory aims of the act are to improve accessibility, affordability and timeliness. Regrettably it provides significant onus on both potential litigants and their lawyers.

Arguably the obligations particularly with respect to certification by the potential plaintiff or defendant are likely to be beyond their scope of understanding.

The then government in introducing the Bill which has now become the act heralded the legislation as seeking to build a culture in which litigants are encouraged to resolve their cases without going to court. Litigation is meant to be a measure of last resort. It also seeks to build a culture where litigants and their lawyers are required to use reasonable endeavours to have an early resolution of cases using appropriate alternative dispute resolution processes (such as mediation). Further, litigants and their lawyers are expected to use reasonable endeavours to ensure that costs are reasonable and proportionate having regard to the complexity or importance of the issues in dispute.

It is not the purpose of this article to set out in detail the requirements of the act but to briefly summarise some of the key elements.

Consistent with the intent of the act the practice obligations are meant to reflect the following:

- Encouragement of alternative dispute resolution.
- That litigation should be an option of last resort.
- That courts as a public resource are to be used responsibly.
- Requiring early exchange of information

These key aims are to be achieved by overarching obligations on all litigants and their lawyers.

Prior to the issue of proceedings by a plaintiff (and prior to the filing of substantive documents by a defendant), the client and the lawyer are required to certify as follows:

- That they have read and understand the obligations set out in the act.
- That the proceeding (or the defence) has a proper basis in fact and in law.

The act applies to the Supreme, County and Magistrates Courts but not to VCAT. It does not however relate to some types of proceedings including accident compensation and transport accident claims (among others).

The act imposes an over riding obligation on a lawyer whose paramount duty is to the court (rather than to the client).

Again among many obligations imposed on parties and their lawyers, there is an obligation to act honestly, to cooperate in the conduct of the proceeding, not to mislead or deceive your opponent and to use reasonable endeavours to resolve or narrow the issues in dispute, to minimise delay and disclose the existence of documents. A number of sanctions apply to both parties and their lawyers if these overarching obligations are not honoured.

Whilst it was intended that the act would be a major reform of civil procedures in Victoria it has come at a "cost" in the sense of the further and onerous obligations on lawyers and their clients.

For further information and advice with respect to the foregoing contact:



Peter Wilson
Director

T: 03 5331 4444
email: pwilson@nevetford.com.au

Ballarat office

40 Armstrong Street North
Ballarat Victoria 3350
T 03 5331 4444
F 03 5333 2694
email:
ballarat@nevetford.com.au

Bacchus Marsh office

183 Main Street
Bacchus Marsh Victoria 3340
T 03 5366 1033
F 03 5367 4991
email:
bacchusmarsh@nevetford.com.au

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