

12 July 2010

Insurance e-alert

The Civil Procedure Bill 2010: Comprehensive overhaul of the civil justice system in Victoria

The Civil Procedure Bill 2010 (Vic) ("**the Bill**") was introduced into the Victorian Parliament on 22 June 2010.

The Bill proposes new "overarching obligations" that will extend beyond legal practitioners to all parties to civil litigation, for example, insurers, expert witness and litigation funders. These parties will have a "paramount duty" to the court to further the administration of justice.

The Bill aims to reform and modernise procedure and processes for the resolution of civil disputes by setting out a framework to ensure that litigation is a measure of last resort and, if required, that the real issues in dispute are identified prior to litigation commencing. The explanatory memorandum states that aim of the Bill is to ensure:

"the appropriate use of the court system by litigants and to prevent the wastage of court resources through inefficient processes or tactical litigation that has the effect of reducing access to the courts for other litigants with meritorious claims."

Pre-Litigation Requirements

The Bill introduces pre-litigation requirements to assist parties resolve civil disputes before the need to commence proceeding. These requirements involve taking reasonable steps to resolve a dispute by agreement or narrow the issues in dispute. Reasonable steps include:

- exchange of pre-litigation correspondence, information, and documents critical to the resolution of the dispute; and
- considering options for resolving the dispute without the need for civil proceedings in a court.

The Bill requires disclosure of "critical" documents at the earliest reasonable time. The disclosure of critical document is not as broad as the discovery obligation once proceedings are commenced. Instead critical documents are intended to be those which a party relies on as forming the basis of their claim when commencing proceedings or those that will adversely affect the party's case.

If reasonable steps to resolve the dispute by agreement, or to clarify and narrow the issues in dispute cannot be taken, a party must set out the reasons why those steps have not been undertaken. The Bill also provides that a court may order costs associated with a party complying with pre-litigation requirements.

However, the pre-litigation requirements will not apply to claims covered by the *Transport Accident Act 1986* (Vic) or the *Accident Compensation Act 1985* (Vic) as these already have established processes.

"Overarching obligations"

The Bill imposes "overarching obligations" on all parties in civil litigation. The explanatory memorandum states that the primary objective of the overarching obligations is to change the culture of litigation, encouraging a less adversarial approach and discouraging abuse of the legal process for strategic purposes.

The proposed "Overarching obligations" include:

- to act honestly;
- to co-operate with the other parties and the court
- to act promptly and minimise delay;
- to use 'reasonable endeavours' to resolve a dispute by agreement between the parties;
- where a dispute cannot be resolved by agreement, to use 'reasonable endeavours' to resolve any issues in dispute which can be resolved.
- to use 'reasonable endeavours' to ensure that legal and other costs incurred in connection with the proceedings are reasonable and proportionate to the complexity or importance of the issues in dispute and the amount in dispute;
- not to make a claim that is frivolous, vexatious, an abuse of process or does not have a proper basis on the factual and legal material available;

- not to take any steps unless there is a reasonable belief that such step is necessary to facilitate the resolution or determination of the proceeding;
- not act in a misleading or deceptive way.

Certification of Proceedings

The Bill sets out a process of certification of pleadings which is similar to that in New South Wales. The legal practitioner must certify that there is a proper basis on the factual and legal material of a Statement of Claim or defence.

Status of the Bill

The Bill has only recently been introduced to Parliament. If passed, all parties completing civil litigation, such as insurers, will have to comply with the overarching obligations and undertake a number of steps prior to issuing proceedings.

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