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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Civil Dispute Resolution Bill 2010

No. , 2010

(Attorney-General)

**A Bill for an Act relating to the resolution of civil
disputes, and for related purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Object of Act	2
4 Genuine steps to resolve a dispute	2
5 Definitions	3
Part 2—Obligation to take genuine steps to resolve disputes before proceedings are instituted	5
6 Genuine steps statement to be filed by applicant	5
7 Genuine steps statement to be filed by respondent	5
8 Genuine steps statements must comply with Rules of Court	6
9 Duty of lawyers to advise people of the requirements of this Act	6
10 Effect of requirements of this Part	6
Part 3—Powers of court	7
11 Court may have regard to genuine steps requirements in exercising powers and performing functions	7
12 Exercising discretion to award costs	7
13 Powers are in addition to powers under other Acts	8
14 Relationship with section 131 of the Evidence Act	8
Part 4—Exclusions	9
15 Proceedings of certain kinds are excluded proceedings	9
16 Proceedings under certain Acts are excluded proceedings	10
17 Proceedings prescribed by the regulations are excluded proceedings	10
Part 5—Other matters	11
18 Rules of Court	11
19 Regulations	11

1 **A Bill for an Act relating to the resolution of civil**
2 **disputes, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *Civil Dispute Resolution Act 2010*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

Part 1 Preliminary

Section 3

1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Part 1 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Parts 2 to 5	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in Column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

10 **3 Object of Act**

11 The object of this Act is to ensure that, as far as possible, people
12 take genuine steps to resolve disputes before certain civil
13 proceedings are instituted.

14 **4 Genuine steps to resolve a dispute**

15 (1) Examples of steps that could be taken by a person as part of taking
16 genuine steps to resolve a dispute with another person, include the
17 following:
18 (a) notifying the other person of the issues that are, or may be, in
19 dispute, and offering to discuss them, with a view to
20 resolving the dispute;

- 1 (b) responding appropriately to any such notification;
2 (c) providing relevant information and documents to the other
3 person to enable the other person to understand the issues
4 involved and how the dispute might be resolved;
5 (d) considering whether the dispute could be resolved by a
6 process facilitated by another person, including an alternative
7 dispute resolution process;
8 (e) if such a process is agreed to:
9 (i) agreeing on a particular person to facilitate the process;
10 and
11 (ii) attending the process;
12 (f) if such a process is conducted but does not result in
13 resolution of the dispute—considering a different process;
14 (g) attempting to negotiate with the other person, with a view to
15 resolving some or all the issues in dispute, or authorising a
16 representative to do so.
- 17 (2) Subsection (1) does not limit the steps that may constitute taking
18 genuine steps to resolve a dispute.

19 5 Definitions

20 In this Act:

21 ***applicant*** in proceedings means a person who institutes the
22 proceedings.

23 ***application*** means an application (however described) by which
24 civil proceedings are instituted.

25 ***civil penalty provision*** means a civil penalty provision however
26 described.

27 ***Commonwealth authority*** means a body corporate established for
28 a public purpose by or under a law of the Commonwealth.

29 ***eligible court*** means the following:

- 30 (a) the Federal Court of Australia;
31 (b) the Federal Magistrates Court.

Section 5

1 ***excluded proceedings*** means proceedings that are excluded
2 proceedings under Part 4.

3 ***genuine steps statement***:

4 (a) for an applicant—see section 6;

5 (b) for a respondent—see section 7.

6 ***lawyer*** has the same meaning as in the *Federal Court of Australia*
7 *Act 1976*.

8 ***respondent*** in proceedings means a person against whom the
9 proceedings are instituted.

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2 **Part 2—Obligation to take genuine steps to resolve**
3 **disputes before proceedings are instituted**

4

5 **6 Genuine steps statement to be filed by applicant**

- 6 (1) An applicant who institutes civil proceedings in an eligible court
7 must file a genuine steps statement at the time of filing the
8 application.
- 9 (2) A genuine steps statement filed under subsection (1) must specify:
10 (a) the steps that have been taken to try to resolve the issues in
11 dispute between the applicant and the respondent in the
12 proceedings; or
13 (b) the reasons why no such steps were taken, which may relate
14 to, but are not limited to the following:
15 (i) the urgency of the proceedings;
16 (ii) whether, and the extent to which, the safety or security
17 of any person or property would have been
18 compromised by taking such steps.
- 19 (3) A genuine steps statement need not be filed under subsection (1) in
20 relation to proceedings that are wholly excluded proceedings.
- 21 (4) A genuine steps statement must be filed under subsection (1) in
22 relation to proceedings that are in part excluded proceedings, but
23 the statement need not relate to the parts of the proceedings that are
24 excluded proceedings.

25 **7 Genuine steps statement to be filed by respondent**

- 26 (1) A respondent in proceedings who is given a copy of a genuine
27 steps statement filed by an applicant in the proceedings must file a
28 genuine steps statement before the hearing date specified in the
29 application.
- 30 (2) A genuine steps statement filed under subsection (1) must:

Part 2 Obligation to take genuine steps to resolve disputes before proceedings are instituted

Section 8

- 1 (a) state that the respondent agrees with the genuine steps
2 statement filed by the applicant; or
3 (b) if the respondent disagrees in whole or part with the genuine
4 steps statement filed by the applicant—specify the respect in
5 which, and reasons why, the respondent disagrees.

6 **8 Genuine steps statements must comply with Rules of Court**

7 A genuine steps statement must comply with any additional
8 requirements specified in the Rules of Court of the eligible court
9 (see section 18) in which the statement is filed.

10 **9 Duty of lawyers to advise people of the requirements of this Act**

11 A lawyer acting for a person who is required to file a genuine steps
12 statement must:

- 13 (a) advise the person of the requirement; and
14 (b) assist the person to comply with the requirement.

15 **10 Effect of requirements of this Part**

- 16 (1) The requirements of this Part are in addition to, and not instead of,
17 requirements imposed by any other Act.
18 (2) A failure to file a genuine steps statement in proceedings does not
19 invalidate the application instituting the proceedings, a response to
20 such an application or the proceedings.

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Part 3—Powers of court2
3**11 Court may have regard to genuine steps requirements in exercising powers and performing functions**4
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6 An eligible court may, in performing functions or exercising
7 powers in relation to civil proceedings before it, take account of the
8 following:

- 9 (a) whether a person who was required to file a genuine steps
10 statement under Part 2 in the proceedings filed such a
11 statement;
- 12 (b) whether such a person took genuine steps to resolve the
13 dispute.

12 Exercising discretion to award costs

14

15 (1) In exercising a discretion to award costs in a civil proceeding in an
16 eligible court, the court, Judge, Federal Magistrate or other person
17 exercising the discretion may take account of:

- 18 (a) whether a person who was required to file a genuine steps
19 statement under Part 2 in the proceedings filed such a
20 statement; and
- 21 (b) whether such a person took genuine steps to resolve the
22 dispute.

23 (2) In exercising a discretion to award costs in a civil proceeding in an
24 eligible court, the court, Judge, Federal Magistrate or other person
25 exercising the discretion may take account of any failure by a
26 lawyer to comply with the duty imposed by section 9.

27 (3) If a lawyer is ordered to bear costs personally because of a failure
28 to comply with section 9, the lawyer must not recover the costs
29 from the lawyer's client.

Section 13

1 **13 Powers are in addition to powers under other Acts**

2 The powers conferred on an eligible court under this Part are in
3 addition to any other powers of the court, whether conferred by this
4 Act or otherwise.

5 **14 Relationship with section 131 of the Evidence Act**

6 To avoid doubt, this Part does not affect the operation of
7 section 131 of the *Evidence Act 1995*.

1

Part 4—Exclusions2
3**15 Proceedings of certain kinds are excluded proceedings**

5 Proceedings are *excluded proceedings* to the extent that they are
6 any of the following:

- 7 (a) proceedings for an order imposing a pecuniary penalty for a
8 contravention of a civil penalty provision;
- 9 (b) proceedings brought by or on behalf of the Commonwealth
10 or a Commonwealth authority for an order connected with:
11 (i) a criminal offence or the possible commission of a
12 criminal offence; or
13 (ii) a contravention or possible contravention of a civil
14 penalty provision;
- 15 (c) proceedings that relate to a decision of, or a decision that has
16 been subject to review by:
17 (i) the Administrative Appeals Tribunal;
18 (ii) the Australian Competition Tribunal;
19 (iii) the Copyright Tribunal of Australia;
20 (iv) the Migration Review Tribunal;
21 (v) the Refugee Review Tribunal;
22 (vi) the Social Security Appeals Tribunal;
23 (vii) the Veterans' Review Board;
24 (viii) a body prescribed by the regulations;
- 25 (d) proceedings in the appellate jurisdiction of an eligible court;
- 26 (e) proceedings arising from the exercise of a power to compel a
27 person to answer questions, produce documents or appear
28 before a person or body under a law of the Commonwealth;
- 29 (f) proceedings in relation to the exercise of a power to issue a
30 warrant, or the exercise of a power under a warrant;
- 31 (g) proceedings that are, or relate to, proceedings in which the
32 applicant or the respondent has been declared a vexatious
33 litigant under a law relating to vexatious litigants (however
34 described);

Section 16

- 1 (h) ex parte proceedings;
2 (i) proceedings to enforce an enforceable undertaking.

3 **16 Proceedings under certain Acts are excluded proceedings**

4 Proceedings are also *excluded proceedings* to the extent that they
5 are proceedings under, or under regulations made under, any of the
6 following Acts:

- 7 (a) the *Australian Citizenship Act 2007*;
8 (b) the *Child Support (Registration and Collection) Act 1988*;
9 (c) the *Fair Work Act 2009*;
10 (d) the *Fair Work (Transitional Provisions and Consequential*
11 *Amendments) Act 2009*;
12 (e) the *Family Law Act 1975*;
13 (f) the *Migration Act 1958*;
14 (g) the *National Security Information (Criminal and Civil*
15 *Proceedings) Act 2004*;
16 (h) the *Native Title Act 1993*;
17 (i) the *Proceeds of Crime Act 1987*;
18 (j) the *Proceeds of Crime Act 2002*.

19 **17 Proceedings prescribed by the regulations are excluded**
20 **proceedings**

- 21 (1) Proceedings are *excluded proceedings* to the extent that they are
22 proceedings prescribed by the regulations for the purposes of this
23 subsection.
- 24 (2) Regulations made for the purposes of subsection (1) may specify
25 proceedings in any way including, but not limited to, by reference
26 to the following:
27 (a) the nature of the proceedings;
28 (b) the subject matter of the proceedings;
29 (c) the Act or regulations, or provision of an Act or regulations,
30 under which the proceedings arise.

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2 **Part 5—Other matters**

3

4 **18 Rules of Court**

5 Rules of Court made under the *Federal Court of Australia Act*
6 *1976* or the *Federal Magistrates Act 1999* may make provision for
7 or in relation to the following:

- 8 (a) the form of genuine steps statements;
9 (b) the matters that are to be specified in genuine steps
10 statements;
11 (c) time limits relating to the provision of copies of genuine
12 steps statements.

13 **19 Regulations**

14 The Governor-General may make regulations prescribing matters:

- 15 (a) required or permitted by this Act to be prescribed; or
16 (b) necessary or convenient to be prescribed for carrying out or
17 giving effect to this Act.