



Civil Dispute Resolution Act 2011

No. 17, 2011

**An Act relating to the resolution of civil disputes,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Civil Dispute Resolution Act 2011

No. 17, 2011

An Act relating to the resolution of civil disputes, and for related purposes

[Assented to 12 April 2011]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Civil Dispute Resolution Act 2011*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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.	12 April 2011
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.	1 August 2011 (see F2011L01408)

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Object of Act

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

4 Genuine steps to resolve a dispute

- (1A) For the purposes of this Act, a person takes *genuine steps to resolve a dispute* if the steps taken by the person in relation to the

dispute constitute a sincere and genuine attempt to resolve the dispute, having regard to the person's circumstances and the nature and circumstances of the dispute.

- (1) Examples of steps that could be taken by a person as part of taking genuine steps to resolve a dispute with another person, include the following:
 - (a) notifying the other person of the issues that are, or may be, in dispute, and offering to discuss them, with a view to resolving the dispute;
 - (b) responding appropriately to any such notification;
 - (c) providing relevant information and documents to the other person to enable the other person to understand the issues involved and how the dispute might be resolved;
 - (d) considering whether the dispute could be resolved by a process facilitated by another person, including an alternative dispute resolution process;
 - (e) if such a process is agreed to:
 - (i) agreeing on a particular person to facilitate the process; and
 - (ii) attending the process;
 - (f) if such a process is conducted but does not result in resolution of the dispute—considering a different process;
 - (g) attempting to negotiate with the other person, with a view to resolving some or all the issues in dispute, or authorising a representative to do so.
- (2) Subsection (1) does not limit the steps that may constitute taking genuine steps to resolve a dispute.

5 Definitions

In this Act:

applicant in proceedings means a person who institutes the proceedings.

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

Section 5

civil penalty provision means a civil penalty provision however described.

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

eligible court means the following:

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

excluded proceedings means proceedings that are excluded proceedings under Part 4.

genuine steps statement:

- (a) for an applicant—see section 6;
- (b) for a respondent—see section 7.

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

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

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

6 Genuine steps statement to be filed by applicant

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

7 Genuine steps statement to be filed by respondent

- (1) A respondent in proceedings who is given a copy of a genuine steps statement filed by an applicant in the proceedings must file a genuine steps statement before the hearing date specified in the application.

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

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

8 Genuine steps statements must comply with Rules of Court

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

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

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

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

10 Effect of requirements of this Part

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

Part 3—Powers of court

11 Court may have regard to genuine steps requirements in exercising powers and performing functions

An eligible court may, in performing functions or exercising powers in relation to civil proceedings before it, take account of the following:

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

12 Exercising discretion to award costs

- (1) In exercising a discretion to award costs in a civil proceeding in an eligible court, the court, Judge, Federal Magistrate or other person exercising the discretion may take account of:
 - (a) whether a person who was required to file a genuine steps statement under Part 2 in the proceedings filed such a statement; and
 - (b) whether such a person took genuine steps to resolve the dispute.
- (2) In exercising a discretion to award costs in a civil proceeding in an eligible court, the court, Judge, Federal Magistrate or other person exercising the discretion may take account of any failure by a lawyer to comply with the duty imposed by section 9.
- (3) If a lawyer is ordered to bear costs personally because of a failure to comply with section 9, the lawyer must not recover the costs from the lawyer's client.

Section 13

13 Powers are in addition to powers under other Acts

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

Part 4—Exclusions

15 Proceedings of certain kinds are excluded proceedings

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

- (a) proceedings for an order imposing a pecuniary penalty for a contravention of a civil penalty provision;
- (b) proceedings brought by or on behalf of the Commonwealth or a Commonwealth authority for an order connected with:
 - (i) a criminal offence or the possible commission of a criminal offence; or
 - (ii) a contravention or possible contravention of a civil penalty provision;
- (c) proceedings that relate to a decision of, or a decision that has been subject to review by:
 - (i) the Administrative Appeals Tribunal;
 - (ii) the Australian Competition Tribunal;
 - (iii) the Copyright Tribunal of Australia;
 - (iv) the Migration Review Tribunal;
 - (v) the Refugee Review Tribunal;
 - (vi) the Social Security Appeals Tribunal;
 - (vii) the Veterans' Review Board;
 - (viii) a body prescribed by the regulations;
- (d) proceedings in the appellate jurisdiction of an eligible court;
- (e) proceedings arising from the exercise of a power to compel a person to answer questions, produce documents or appear before a person or body under a law of the Commonwealth;
- (f) proceedings in relation to the exercise of a power to issue a warrant, or the exercise of a power under a warrant;
- (g) proceedings that are, or relate to, proceedings in which the applicant or the respondent has been declared a vexatious litigant under a law relating to vexatious litigants (however described);

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

16 Proceedings under certain Acts are excluded proceedings

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

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

17 Proceedings prescribed by the regulations are excluded proceedings

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

Part 5—Other matters

17A Act does not exclude or limit law relating to disclosure of information, etc.

To avoid doubt, this Act does not exclude or limit the operation of a law of the Commonwealth, a law of a State or Territory, or the common law (including the rules of equity), relating to the use or disclosure of information, the production of documents or the admissibility of evidence.

18 Rules of Court

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

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

19 Regulations

The Governor-General may make regulations prescribing matters:

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

*[Minister's second reading speech made in—
House of Representatives on 30 September 2010
Senate on 25 October 2010]*

(188/10)

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