

# **CIVIL PROCEDURE**

**RMIT UNIVERSITY  
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## Legend

**Australian Case**

**UK Case**

**Foreign Case/Legislation**

# Preliminary Considerations

## *Civil Procedure Act 2010 (Cth) s 7(1)*

### **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.

## Overarching Obligations

### Participants

## *Civil Procedure Act 2010 (Cth) s 10*

### **APPLICATION OF OVERARCHING OBLIGATIONS**

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.

### Civil Proceedings

## *Civil Procedure Act 2010 (Cth) s 11*

### **APPLICATION OF OVERARCHING OBLIGATIONS**

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.

### Paramount Duty

## *Civil Procedure Act 2010 (Cth) s 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;

## ***Supreme Court (General Civil Procedure) Rules 2015 (Vic) reg 10.06***

### **COUNTERCLAIM INCONVENIENT**

Notwithstanding Rules 10.02 and 10.03, where a counterclaim may embarrass or delay the trial of the claim of the plaintiff or cause prejudice to any party or otherwise cannot conveniently be tried with that claim, the Court may—

- a. order separate trials of the counterclaim and the claim of the plaintiff;
- b. order that any claim included in the counterclaim be excluded;
- c. strike out the counterclaim without prejudice to the right of the defendant to assert the claim in a separate proceeding;
- d. order that any person joined as defendant to the counterclaim cease to be a party to the counterclaim.

## **Third Party Claims**

## ***Supreme Court (General Civil Procedure) Rules 2015 (Vic) reg 11.01***

### **CLAIM BY THIRD PARTY NOTICE**

Where a defendant claims as against a person not already a party to the proceeding (in this Order called the third party)—

- a. any contribution or indemnity;
- b. any relief or remedy relating to or connected with the original subject matter of the proceeding and substantially the same as some relief or remedy claimed by the plaintiff; or
- c. that any question relating to or connected with the original subject matter of the proceeding should be determined not only as between the plaintiff and the defendant but also as between either or both of them and the third party—

the defendant may join the third party as a party to the proceeding and make the claim against that third party by filing and serving a third party notice.

## ***Supreme Court (General Civil Procedure) Rules 2015 (Vic) reg 11.05***

### **TIME FOR THIRD PARTY NOTICE**

1. In a proceeding commenced by writ or a proceeding in respect of which an order has been made under Rule 4.07(1), a defendant may not file a third party notice until the defendant has first served a defence.
2. A defendant may file a third party notice—
  - a. within 30 days after the time limited for the service of a defence; or
  - b. at any time with the leave of the Court or the consent in writing of the plaintiff and any other party who has appeared.

## ***Supreme Court (General Civil Procedure) Rules 2015 (Vic) reg 11.06***

### **LEAVE TO FILE THIRD PARTY NOTICE**

An application for leave to file a third party notice shall be made on notice to the plaintiff but the Court may direct notice to be given to any other party who has appeared.

## **Anshun Estoppel**

## ***Port of Melbourne v Anshun (1981) 147 CLR 589***

Precludes parties in subsequent proceedings from raising causes of actions or issues which they could and should have raised in earlier proceedings.

# Class Actions

## *Supreme Court Act 1986 (Vic) s 33C(1)*

### COMMENCEMENT OF PROCEEDING

1. Subject to this Part, if—
  - a. seven or more persons have claims against the same person; and
  - b. the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances; and
  - c. the claims of all those persons give rise to a substantial common question of law or fact—a proceeding may be commenced by one or more of those persons as representing some or all of them.

## *Philip Morris v Nixon (2000) 170 ALR 487*

### OVERTURNED

The applicant and each group member must have a claim against each respondent.

## *Bray v F Hoffman-La Roche Ltd (2003) 200 ALR 607*

Class actions with multiple respondents it is not necessary for all applicants to have a claim against all respondents.

## *Wong v Silkfield Pty Ltd (1999) 199 CLR 255*

### TIGHT INTERPRETATION

A 'substantial common issue' is one that is serious, rather than trivial, and its resolution could significantly impact the claims of all group members.

## *Bright v Femcare (2002) 195 ALR 574*

### LOOSE INTERPRETATION

The applicant's wasted costs and disbursements resulted in proceedings being discontinued because the class action mechanism was not providing effective relief.

## "Opt-Out" system

## *Supreme Court Act 1986 (Vic) s 33E*

### CONSENT OF GROUP MEMBER

1. Subject to subsection (2), the consent of a person to be a group member is not required.
2. None of the following persons is a group member unless the person gives consent in writing to being so—
  - a. the Commonwealth, a State or a Territory; or
  - b. a Minister of the Commonwealth, a State or a Territory; or
  - c. a body corporate established for a public purpose by a law of the Commonwealth, a State or a Territory, other than an incorporated company or association; or
  - d. any judge, magistrate or other judicial officer of the Commonwealth, a State or a Territory; or
  - e. any other officer of the Commonwealth, a State or a Territory, in his or her capacity as an officer.