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THE OVERARCHING PURPOSE OF CIVIL LITIGATION

OVERARCHING PURPOSE

The overarching purpose of the *Civil Procedure Act 2010 (Vic) (CPA)* and the *Supreme Court (General Civil Procedure) Rules 2025 (Vic) (SC(GCP)R)* in relation to civil proceedings: **“is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.”**

CPA s 7(1).

“Without limiting how the overarching purpose is achieved, it may be achieved by—

- (a) the determination of the proceeding by the court;
- (b) agreement between the parties;
- (c) any appropriate dispute resolution process—
 - (i) agreed to by the parties; or
 - (ii) ordered by the court.”

CPA s 7(2).

Application of the Overarching Purpose – Part 2.2 CPA

- The overarching purpose/obligations applies to parties, their lawyers, law firms, anyone providing financial assistance, insurers and expert witnesses (*CPA s 10*)
- The overarching purpose/obligations apply to the dispute at first instance, dispute resolution processes, interlocutory procedures and appeals (*CPA s 11*)
- The overarching purpose/obligations prevail over any other legal obligation in the event of inconsistency except for the paramount duty to the court (*CPA s 12*)
- The overarching purpose/obligations do not override any duty or obligation of a legal practitioner to a client to the extent that those duties and obligations can operate consistently. In the event of an inconsistency, the overarching purpose/obligations prevail and a legal practitioner is not required to comply with client instructions that are inconsistent with the overarching purpose/obligations (*CPA s 13*)
- A lawyer must not by their conduct, cause their client to contravene the overarching purpose/obligations (*CPA s 14*)
- Nothing in Part 2.2 overrides any duty or obligation of a legal practitioner to the court which is the paramount duty (*CPA s 15*)

The Overarching Obligations – Part 2.3 CPA

All persons to whom the overarching purpose applies (under s 10):

- have “a paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that person is involved” (*CPA s 16*)
- “must act honestly at all times in relation to a civil proceeding” (*CPA s 17*)
- must not make or make a response to any claim that is frivolous, vexatious, an abuse of process or does not have a proper basis (*CPA s 18*)

- must only take steps that they reasonably believe will lead to or facilitate the resolution of the dispute (CPA s 19)
- must cooperate with the court and the other parties to the proceeding and with the conduct of the proceeding (CPA s 20)
- must not engage in conduct in respect of the civil proceeding that is misleading or deceptive or is likely to mislead or deceive (CPA s 21)
- must use “reasonable endeavours” to resolve the dispute/avoid court (CPA s 22)
- must use “reasonable endeavours” to narrow the issues (and their scope) in dispute that cannot be resolved by agreement out of court (CPA s 23)
- must ensure that legal and associated costs are reasonable and proportionate to the complexity of the issues and the amount of the dispute (CPA s 24)
- must act promptly and minimise delay (CPA s 25)

CASE: Yara Australia Pty Ltd v Oswal (2013) 41 VR 302

Facts: This was an application for leave to appeal the decision by a single Judge not to order the respondents to provide security of costs. The application for leave to appeal was heard in one day and the applicants were represented by 3 senior counsel, 4 junior counsel and instructed by 4 firms of solicitors. The parties filed 6 application folders comprising submissions, affidavit material, transcripts of the original hearing and authorities that ran to over 2,700 pages. The application contained many unnecessary documents, many of which were not referred to in the application. The Court of Appeal took the very unusual step of asking the parties to address them on whether they had breached s 24 of the CPA.

Held: unanimously at [51]-[52] that “the overarching obligation under s 24 to ensure that costs were reasonable and proportionate has been breached by the filing of excessive material. ... The Act’s objective is the reform of the culture of unnecessary expenditure on civil litigation. Parliament has intended that this reform can only be achieved by holding parties to account for undesirable civil litigation practices that are unfortunately too common. The court was burdened with excessive material. The applicants and the respondents were burdened with the costs of that material. **There has been a breach of the overarching obligation to ensure the costs are reasonable and proportionate by including in the application books voluminous material that was extraneous or repetitious and excessive.**”

At [14]: “Each party and their solicitor and counsel have an obligation to comply with the overarching obligation. **Whether any of them have breached that overarching obligation is to be determined by an objective evaluation of their conduct having regard to the issues and the amount in dispute in the proceeding.** The legal practitioners’ duty is non-delegable. **The obligation will override their duty to their client where the discharge of that duty would be inconsistent with the overarching obligation. The legal practitioners will not be relieved of this overarching responsibility because of the instructions of their client.**”

The application for leave to appeal was dismissed and the Court of Appeal ordered under s 29:

- Each applicant to pay the respondents costs
- Each applicant's solicitor to indemnify the applicant 50% of the respondents costs incurred because of the excessive content of the application books
- Each applicant's solicitor was disallowed recovery from the applicant of 50% of the costs relating to the preparation of the application books and incidental costs