



Commencement of the *Civil Dispute Resolution Act 2011*

The substantive provisions of the *Civil Dispute Resolution Act 2011*¹ will commence by Proclamation² on 1 August 2011. The *Civil Dispute Resolution Regulations 2011*³ will also commence on this date.

Purpose of the *Civil Dispute Resolution Act 2011*

The Act encourages parties to take 'genuine steps' to resolve their disputes before commencing certain proceedings in the Federal Court of Australia or in the Federal Magistrates Court.

The Act is consistent with the Federal Government's *Strategic Framework for Access to Justice in the Federal Civil Justice System*,⁴ which promotes more effective and earlier dispute resolution in order to overcome barriers to access to justice.

It implements key recommendations from the National Alternative Dispute Resolution Advisory Council report, *The Resolve to Resolve – Embracing ADR to Improve Access to Justice in the Federal Jurisdiction* (2009).⁵

What does the Act do?

The Act does not mandate the taking of any particular steps before proceedings are commenced. For the purposes of the Act, a person takes genuine steps to resolve a dispute if the steps taken are a sincere and genuine attempt to resolve the dispute, having regard to the person's circumstances and the nature and the circumstances of the dispute.⁶ The Act provides a non-exhaustive list of examples of the kinds of steps that could be taken.⁷

Key points to note are:

- Applicants will be required to file a 'genuine steps statement' saying what steps they have taken to resolve the dispute prior to commencing proceedings, or if they have not taken any steps to resolve the dispute, the reasons why not.⁸
- Respondents will be required to file a 'genuine steps statement' indicating if they agree with the applicant's statement and, if not, the reasons why not.⁹
- Failure to lodge a statement by either party will not prevent the commencement of a proceeding in the courts.¹⁰ However, the court can take into account any such failure when using its existing case management directions and costs powers,¹¹ including costs orders against lawyers who have failed to comply with their duties under the Act.¹²

¹ Available at <<http://www.comlaw.gov.au/Details/C2011A00017>>.

² Available at <<http://www.comlaw.gov.au/Details/F2011L01408>>.

³ Available at <<http://www.comlaw.gov.au/Details/F2011L01409>>.

⁴ Available at <<http://www.ag.gov.au/a2j>>.

⁵ Available at <http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_TheResolveToResolveEmbracingADRtoimproveaccesstojusticeinthefederaljurisdiction>.

⁶ Subsection 4(1A).

⁷ Subsections 4(1) and 4(2).

⁸ Section 6.

⁹ Section 7.

¹⁰ Subsection 10(2).

¹¹ Sections 11 and 12.

¹² Subsection 12(2).



- Information disclosed during the genuine steps process is subject to all the same protections from disclosure that currently exist under law.¹³ For example, section 131 of the *Evidence Act 1995* will still protect communications made and documents prepared in connection with an attempt to negotiate a settlement of the dispute. It is not intended that 'genuine steps statements' should go into any detail of what happened during negotiations or ADR processes undertaken, but instead indicate what steps have taken place, or if none were taken, why not.
- A lawyer acting for a person who is required to file a genuine steps statement must advise the person of the requirement and assist the person to comply with the requirement.¹⁴

Matters excluded from operation of the Act

The Act will apply to all federal civil law matters, unless an exemption is provided for in the Act or under the Regulations. Certain Acts have been excluded, particularly those Acts that establish very specific dispute resolution regimes of their own, such as the *Family Law Act 1975*, the *Migration Act 1958*, the *Native Title Act 1993* and the *Fair Work Act 2009*.¹⁵

In addition, undertaking genuine steps is either not practicable or appropriate in certain cases. For that reason, the Act excludes certain proceedings including proceedings relating to a civil penalty or criminal offence, appeals, ex parte proceedings and proceedings involving a vexatious litigant.¹⁶

Regulations have also been made which exclude certain other proceedings from the requirements of the Act, namely:¹⁷

- Proceedings for a sequestration order under section 43 of the *Bankruptcy Act 1966*, if the act of bankruptcy relied on arises under paragraph 40(1)(g) of that Act
- Proceedings for an order under section 459A of the *Corporations Act 2001* to wind up a company in insolvency, if the application for the order relies on a failure by the company to comply with a statutory demand, and
- Proceedings for review of a decision of a Registrar of an eligible court (meaning the Federal Court or the Federal Magistrates Court).

Court Rules

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

It is understood that the Federal Court and the Federal Magistrates Court will both make new Rules and prescribe forms for 'genuine steps statements', which are also expected to commence on 1 August 2011.

Further information

Should you have any further queries in relation to the Act, please contact one of the following officers in the Justice Policy Branch of the Commonwealth Attorney-General's Department:

Karen Moore, Assistant Secretary	[02] 6141 4180
Serena Beresford-Wylie, Principal Legal Officer	[02] 6141 3086

¹³ Section 17A.

¹⁴ Section 9.

¹⁵ See section 16.

¹⁶ See section 15.

¹⁷ Available at <<http://www.comlaw.gov.au/Details/F2011L01409>>.

¹⁸ Section 8.