
PART 2.3—THE OVERARCHING OBLIGATIONS

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;
- (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.

17 Overarching obligation to act honestly

A person to whom the overarching obligations apply must act honestly at all times in relation to a civil proceeding.

18 Overarching obligation—requirement of proper basis

A person to whom the overarching obligations apply must not make any claim or make a response to any claim in a civil proceeding that—

- (a) is frivolous; or
- (b) is vexatious; or
- (c) is an abuse of process; or
- (d) does not, on the factual and legal material available to the person at the time of making the claim or responding to the claim, as the case requires, have a proper basis.

19 Overarching obligation to only take steps to resolve or determine dispute

For the purpose of avoiding undue delay and expense, a person to whom the overarching obligations apply must not take any step in connection with any claim or response to any claim in a civil proceeding unless the person reasonably believes that the step is necessary to facilitate the resolution or determination of the proceeding.

20 Overarching obligation to cooperate in the conduct of civil proceeding

A person to whom the overarching obligations apply must cooperate with the parties to a civil proceeding and the court in connection with the conduct of that proceeding.

21 Overarching obligation not to mislead or deceive

A person to whom the overarching obligations apply must not, in respect of a civil proceeding, engage in conduct which is—

- (a) misleading or deceptive; or
- (b) likely to mislead or deceive.

22 Overarching obligation to use reasonable endeavours to resolve dispute

A person to whom the overarching obligations apply must use reasonable endeavours to resolve a dispute by agreement between the persons in dispute, including, if appropriate, by appropriate dispute resolution, unless—

- (a) it is not in the interests of justice to do so; or

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- (b) the dispute is of such a nature that only judicial determination is appropriate.

Example

A proceeding where a civil penalty is sought may be of such a nature that only judicial determination is appropriate.

23 Overarching obligation to narrow the issues in dispute

If a person to whom the overarching obligations apply cannot resolve a dispute wholly by agreement, the person must use reasonable endeavours to—

- (a) resolve by agreement any issues in dispute which can be resolved in that way; and
(b) narrow the scope of the remaining issues in dispute—

unless—

- (c) it is not in the interests of justice to do so; or
(d) the dispute is of such a nature that only judicial determination is appropriate.

24 Overarching obligation to ensure costs are reasonable and proportionate

A person to whom the overarching obligations apply must use reasonable endeavours to ensure that legal costs and other costs incurred in connection with the civil proceeding are reasonable and proportionate to—

- (a) the complexity or importance of the issues in dispute; and
(b) the amount in dispute.

25 Overarching obligation to minimise delay

For the purpose of ensuring the prompt conduct of a civil proceeding, a person to whom the overarching obligations apply must use reasonable endeavours in connection with the civil proceeding to—

- (a) act promptly; and
- (b) minimise delay.

26 Overarching obligation to disclose existence of documents

- (1) Subject to subsection (3), a person to whom the overarching obligations apply must disclose to each party the existence of all documents that are, or have been, in that person's possession, custody or control—
 - (a) of which the person is aware; and
 - (b) which the person considers, or ought reasonably consider, are critical to the resolution of the dispute.
 - (2) Disclosure under subsection (1) must occur at—
 - (a) the earliest reasonable time after the person becomes aware of the existence of the document; or
 - (b) such other time as a court may direct.
 - (3) Subsection (1) does not apply to any document which is protected from disclosure—
 - (a) on the grounds of privilege which has not been expressly or impliedly waived; or
 - (b) under any Act (including any Commonwealth Act) or other law.
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- (4) The overarching obligation imposed by this section—
- (a) is an ongoing obligation for the duration of the civil proceeding; and
 - (b) does not limit or affect a party's obligations in relation to discovery.

27 Protection and use of information and documents disclosed under overarching obligation in section 26

- (1) A person who receives any information or documents provided by another person involved in the civil proceeding as a result of disclosure in compliance with the overarching obligation in section 26 is subject to an obligation not to use the information or documents, or permit the information or documents to be used, for a purpose other than in connection with the civil proceeding.
- (2) The obligation under subsection (1) is taken to be an obligation to the court, contravention of which constitutes contempt of court.
- (3) A person—
 - (a) may agree in writing to the use of information or documents otherwise protected under subsection (1); or
 - (b) may be released from the obligation imposed under subsection (1) by leave of the court.
- (4) Without limiting this section or discovery in any civil proceeding any information or documents exchanged in compliance with the overarching obligation in section 26 is required to be discovered in the civil proceeding to be admissible in that proceeding.