Article Information

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Civil Procedure Act 2010

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The *Civil Procedure Act 2010* (**the Act**) is fast becoming a powerful rule book governing the conduct of civil proceedings in Victoria. If litigants and their legal advisers do not follow it, then they do so at their peril. We have utilised the Act for the benefit of a publicly listed company, and the Act is becoming an important tool in the conduct of litigation, particularly where parties or their solicitors stray from the conduct stipulated in the Act.

The Supreme Court has made recent rulings on the application of the Civil Procedure Act that are worthy of attention. **Partner, Ian Nathaniel** and **Senior Associate, Ben Hartley**, discuss further.
In *Naumovski v Ugrinovski* the plaintiffs issued a series of very lengthy subpoenas. Ugrinovski and a non-party objected to the subpoenas that were served. Critically, Ugrinovski's solicitors wrote to the plaintiffs outlining their objections. This correspondence and five subsequent letters and emails were ignored by the plaintiffs. The plaintiffs eventually consented to the subpoenas being set aside leaving the question of costs to be determined. Justice Zammit found that the plaintiffs were in breach of sections 19 and 20 of the Act (the overarching obligations to only take steps to resolve or determine the dispute and to cooperate in the conduct of civil proceedings respective), noting the failure to respond to correspondence. Indemnity costs were ordered against the plaintiffs as a result of their breaches of the Act.

In *Stewart v State of Victoria (No.2)* there was a dispute relating to discovery. Zurich resisted discovery of a certain category of documents on the grounds they were irrelevant and if relevant, they were privileged. The Court ordered the documents be discovered. Zurich did not discover the documents and advised that the documents did not exist. On an application for breaches of the Act – the documents in question being discovered the day prior to the application being heard – Associate Justice Lansdowne found Zurich in breach of sections 23 and 25 of the Act (the overarching obligations to narrow the issues in dispute and the obligation to minimise delay respectively) and ordered that Zurich pay a partial indemnity costs order.

In *Re Manilo (No 2)* the Court undertook a detailed review of the evidence at trial and the conduct of Counsel (and solicitors). Justice McDonald found that Counsel for the plaintiff had contravened section 18 (the requirement to have a proper basis) by making an opening submission that did not have a proper basis and was inconsistent with the plaintiff's evidence at trial. Criticism was also directed to the plaintiff's solicitors and opposing Counsel. The Court ordered that a copy of the judgment at trial and the judgment regarding the breach of the Act (amongst others) be referred to the Legal Services Commissioner.

As can be seen from the last case, the implications for a breach of the Act can be far reaching and have implications beyond the current litigation.