

# **LITIGATION AND DISPUTE MANAGEMENT SUMMARY**



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Sample

# Topic 1: Introduction

## 1.1 Background

Litigation and dispute resolution management (also known as civil procedure) includes the rules and regulations which oversee court proceedings and conduct. This management is concerned with the enforcement of a right. This may be distinguished from substantive law which is concerned with the establishment of a right.

Civil procedure draws its authority from various rules across different Australian jurisdictions. The principal rules for each jurisdiction are identified in the table below.

Jurisdiction	Rule
Queensland	<i>Uniform Civil Procedure Rules 1999 (Qld)</i>
New South Wales	<i>Uniform Civil Procedure Rules 2005 (NSW)</i>
Australian Capital Territory	<i>Supreme Court Rules 1937 (ACT)</i>
Victoria	<i>Supreme Court (General Civil Procedure) Rules 1996 (Vic)</i>
Tasmania	<i>Supreme Court Rules 2000 (Tas)</i>
South Australia	<i>Supreme Court Rules 1987 (SA)</i>
Northern Territory	<i>Supreme Court Rules 1987 (NT)</i>
Western Australia	<i>Rules of the Supreme Court 1971 (WA)</i>
High Court	<i>High Court Rules 2004</i>
Federal Court	<i>Federal Court Rules 1979</i>

The various civil procedure rules are generally flexible enough to accommodate the unique characteristics of each individual court.

**NOTE:** It is advisable that the actual text of the applicable rules in your jurisdiction should be read in conjunction with this law summary.

Civil procedure also draws its authority from various Acts across different Australian jurisdictions. In New South Wales, for example, the *Civil Procedure Act 2005* (NSW) and various court Acts such as the *Local Court Act 2007* (NSW) govern civil procedure. The *Evidence Act 1995* (Cth) plays a key role at the Commonwealth level.

## 1.2 Overriding Purpose

The overarching purpose of many of the Acts regarding civil procedure can be summarised as 'efficiency'. This purpose includes common features such as:

- just resolution of disputes;
- quick resolution of disputes;
- cheap resolution of disputes;
- correct and accurate fact-finding; and
- enforcement of judgments or court orders.

Notably, section 37M(1) of the *Federal Court of Australia Act 1976* (Cth) stipulates that the "overarching purpose" of civil litigation is to "facilitate the just resolution of disputes (a) according to law; and (b) as quickly, inexpensively and efficiently as possible".

Furthermore, section 56 of the *Civil Procedure Act 2005* (NSW) prescribes the "just, quick, and cheap" resolution of civil proceedings to be the 'overriding purpose' of civil litigation. The provision is overriding in the sense that when the court exercises procedural powers, it must always have regard to this purpose (s 56(2)). Furthermore, any parties or legal practitioners which are part of the proceedings must also assist the court in achieving this objective (ss 56(3), (4)).

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