

15 October 2010

70.17, A34
JM;rp

Mr Bill Grant AM
Secretary-General
The Law Council of Australia
GPO Box 1989
CANBERRA ACT 2601

Dear Bill

Thank you for the opportunity of commenting on the *Civil Dispute Resolution Bill 2010*.

The Law Society of South Australia supports the introduction of the *Civil Dispute Resolution Bill 2010* as an initiative to encourage legal practitioners to facilitate early ADR opportunities. Legal practitioners are not the only gate keepers for the effective management of early dispute resolution. The effective and efficient implementation of early dispute resolution is systemic and largely resides within the courts. The Society would be interested in the development of initiatives within the administration systems supporting courts and tribunals which increase pre action access to ADR within courts and tribunals.

The following specific comments may assist further consideration of the legislation.

Section 6 - genuine steps statement filed by applicant

There is some risk that applicants may use this as an opportunity to submit gratuitous material that comes to the attention of the trial judge. More specificity regarding the nature and scope of genuine steps statements may be warranted. In addition, there is a risk of waiver of privilege when a confidential genuine steps statement is filed. Further, in cases where there is an issue as to whether genuine steps have been taken and it becomes necessary for a Judge or judicial officer to make that determination, this may impact on the Federal Court's single judge management regime. That is, it may be necessary for a different Judge or judicial officer to make that determination, depending on the content of the Genuine Steps Statement and the stage of the litigation.

Section 7(1) - respondent must file genuine steps statement before the hearing date specified in the application

Not all applications will specify a first return/hearing date as in some registries this date is allocated after an appearance is filed. We suggest this be amended to require respondents to file the statement before the first return date before the court.

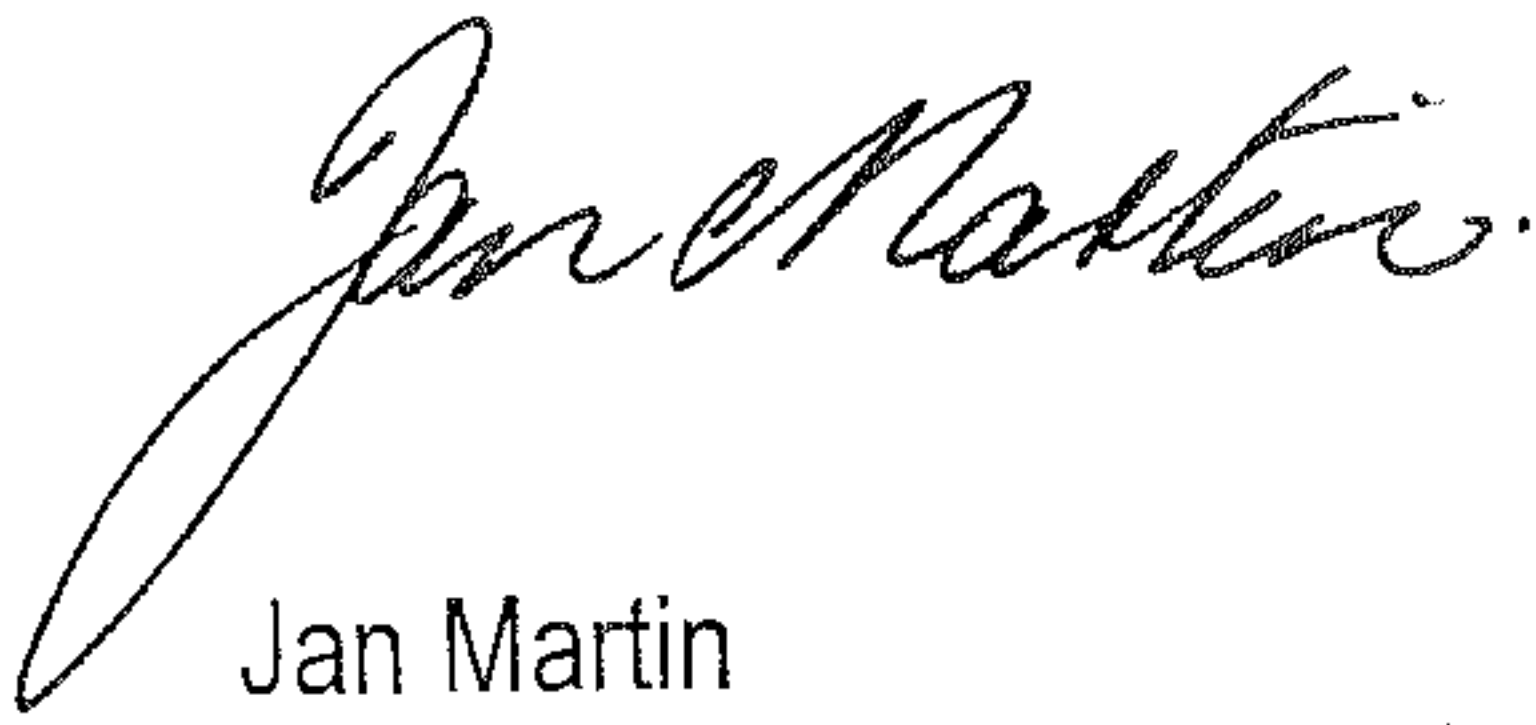
Section 12 - exercising discretion to award costs

Currently the exercise of the discretion is itself discretionary and query whether it should be mandatory.

The Society recommends a change from 'may' to 'must' in section 12.1 but that 'may' remain in section 12.2.

I trust these comments are of assistance.

Yours sincerely

A handwritten signature in cursive script that reads "Jan Martin".

Jan Martin
EXECUTIVE DIRECTOR