

CJRB 6/2007

《2007年民事司法制度（雜項修訂）條例草案》委員會

對立法會法律事務部所提事項的回應

目的

本文列出政府當局/司法機構政務處對立法會法案委員會助理法律顧問在2007年6月12日及2007年7月17日的函件中所提事項的回應。必須強調的是，本文所載涉及法律的意見，並不能視作法庭對有關法律的說明。法庭只會在實際案件中聆聽了有關爭議事項的論據後，才可作出司法裁定或法律說明。

第5部 – 無理纏擾的訴訟人

- A. 提供有關其他普通法司法管轄區防止無理纏擾的法例的資料，特別是 –
- (a) 除律政人員（例如律政司司長、律政司、律政專員等）外，法律程序的一方及/或非法律程序的一方可否申請命令，禁制無理纏擾的訴訟人提起或繼續進行法律程序；
 - (b) 該等司法管轄區的法例有否為“無理纏擾的法律程序/訴訟人”一詞下定義；及
 - (c) 如訴訟人是在得到合資格的法律執業者提供法律意見下提出有關法律程序，可否針對該訴訟人提出申請。

請提供相關海外法例的複本。

2. 有關上述立法會助理法律顧問所提問題的(a)及(b)項，司法機構就四個普通法司法管轄區防止無理纏擾的法律程序的法例進行了研究，分別為 –

- (a) 英格蘭及威爾斯
- (b) 新西蘭
- (c) 加拿大（安大略省）；及
- (d) 澳洲

3. 至於(i)甚麼人士可申請“無理纏擾的訴訟人命令”，及(ii)“無理纏擾的法律程序/訴訟人”一詞是否有定義，有關資料概列於下表。詳細的研究結果及相關條文載於附件。

附件

司法管轄區	誰可提出申請？	有否為“無理纏擾的法律程序/訴訟人”下定義？
英格蘭及威爾斯	律政司	沒有
新西蘭	律政司	沒有
加拿大（安大略省）	沒有註明	沒有
澳洲	在七個州 / 區內（昆士蘭州及向高等法院提出的申請除外），律政人員以外的人士可提出申請。各州 / 區法例採用的字眼可能有所不同，但此等人士大概包括 — — “感到受屈的人”； — 被已提起的無理纏擾的法律程序所針對的人； — 在事件中有充分利害關係的人。	其中四個州 / 區的法例有為“無理纏擾的法律程序”一詞下定義，分別為 — (i) 昆士蘭州； (ii) 西澳大利亞州； (iii) 澳北區；及 (iv) 澳大利亞首都直轄區。

4. 至於立法會助理法律顧問上述所提問題的 (c) 項，根據研究結果，其他普通法司法管轄區的法例看來並沒

有明文規定，在處理“無理纏擾的訴訟人命令”申請時，假如該訴訟人是在得到合資格的法律執業者提供法律意見下提出有關法律程序，法庭便應採用不同的考慮因素。在香港，無論有關訴訟人事先有否得到法律意見，《高院條例》第 27 條為作出命令所訂的測試準則都是一樣。無理纏擾的訴訟人曾否得到法律意見，並非採用不同處理方法的理由。法庭乃從客觀角度考慮有關事宜。

B. 由於有關法律程序的任何一方或任何聲稱曾直接蒙受該等法律程序所導致的不利影響的人都可根據擬議的《高院條例》第 27 條申請命令，是否訂有任何保障，以防止根據擬議第 27 條提出無理據的申請？

5. 根據擬議的第 27 條，任何屬擬議第 27 (5) 條所指的“受影響的人”都可申請“無理纏擾的訴訟人命令”，而無須法庭批予許可。擬議條文的原意為，法庭在按照第 27 條所訂的嚴格要求來處理此等申請時，可藉着運用酌情權以提供若干保障。縱有濫用新條文的情況，也可透過頒布適當的訟費命令來處理。

6. 經研究其他普通法司法管轄區無理纏擾的法律程序的有關法例（見附件）後，我們留意到在昆士蘭州、西澳大利亞州及澳北區，非法律專業人士（即律政人員及司法常務官以外人士）如欲申請“無理纏擾的訴訟人命令”，必須先獲得法庭許可。

附件

7. 正如立法會法律助理顧問正確地指出，《條例草案》第 5 部的目的是除去無理纏擾的訴訟，從而使法院資源更公平分配，並用於真正須要解決的爭議上。要求“受影響的人”在申請“無理纏擾的訴訟人命令”時須先獲得法庭許可，應可提供妥善保障，以防止根據擬議第 27 條提出無理據的申請。如獲各委員同意，政府當局將提出委員會審議階段修正案，在擬議的第 27 條加入新規定，訂明“受影響的人”必須先獲法庭許可才可提出申請。

第 6 部—文件披露

C. 建議的法例所提述的為“直接有關”的文件，而現行法例所提述的則為“有關”的文件；兩者有何分別？

8. 誠如立法會助理法律顧問指出，在現行法例中“有關”一詞，其解釋與《高等法院規則》（“《高院規則》”）（第 4A 章）第 24 號命令第 1 條規則的“關於有關事宜”相同（見 *Chan Tam-sze & Ors v Hip Hing Construction Co Ltd & Ors* [1990] HKLR 473 一案）。故此，這個詞彙所涵蓋的文件可能引伸至 *Peruvian Guano* 準則中所指會引發一連串調查的文件。

9. 相反來說，在《條例草案》第 41(2)條採用“直接有關”一詞及界定其定義是為了摒除“會引發一連串調查”的文件或背景文件，以收窄法律程序展開前所須作出文件披露的範圍。使用這個詞彙和界定其意義是旨在反映民事司法制度改革工作小組的建議 75 及 77。誠如《最後報告書》所述：“工作小組認為此規則能夠合理地平衡以下兩種需要：一方面需防止為搜羅資料而提出的試探性申請，以免造成騷擾；另一方面亦需讓可能具有充分理據（但除此以外便無法在實際上提出申索）的原告人得以提出申索。

D. 請提供具體的例子，說明在人身傷害申索中，何種類別的文件為“有關”的文件，但又非“直接有關”的文件。

10. 關於在特定的個案中，個別文件是與案直接有關，因而可能須在法律程序展開前披露，或只因屬於背景文件或會引發一連串調查的文件而被視作相關，這一點是無法斷然確定的。以特定的個案而言，這個問題須視乎提出申索的情況，方能作答。

E. 在人身傷害申索中，可能會成為申索人的一方將來是否也須要就所尋求文件符合新的相關性準則，法庭才會作出在法律程序展開前須披露文件的命令？若然，請向法案委員會說明變動的理由。

11. 修訂建議的效力將會是，所有就法律程序展開前要求披露文件的申請，均須符合新的準則。故此，在人身傷害申索中，可能會成為申索人的一方所須符合的準則將有所改變：他們將須符合“直接相關性”這個較嚴緊的新準則。然而，值得注意的是“直接有關”此一概念已在現行的《實務指示》第 18.1 項中有關人身傷亡案件審訊表程序的條文說明（雖然沒有下定義）。《實務指示》第 18.1 項第 7 段訂明：

“.....當法庭考慮會否作出特定的透露或披露命令時，會考慮.....所要求透露或披露的文件是否完全直接與雙方的爭議有關。” — 後加低線，以示強調

12. 經過較早前進行的《條例草案》（該《條例草案》在 2006 年 4 月公布）諮詢後，督導委員會認為對所有就法律程序展開前要求披露文件的申請，採用單一和統一的準則是較為可取的。在法律程序展開前披露文件方面，並無理由在人身傷害申索中採用較為寬鬆，但在其他申索中則較為嚴格的準則。事實上，在這兩種情況下作出在法律程序展開前披露文件的命令之目的，是一致的 — 這就是讓擬成為原告人的一方能確定他是否有理據提出申索。我們認為就文件披露採用建議的準則，已能達致此目的。

行政署
政務司司長辦公室

司法機構政務處

2007 年 9 月

在各普通法司法管轄區
有關無理纏擾的法律程序之法例

項次	司法管轄區	有關法例	誰可提出申請？	有否為“無理纏擾的法律程序/ 訴訟人”下定義？
1.	英格蘭及威爾斯	《1981 年最高法院法令》第 42 條 (註 1)	律政司	沒有
2.	新西蘭	按《2005 年司法制度修訂法令(第 2 號)》修訂之《1965 年司法法令》第 88B 條 (註 2)	律政司	沒有
3.	加拿大(安大略省)	《1990 年法院法令》第 140 條 (註 3)	沒有註明	沒有
4.	澳洲(新南威爾士州)	《1970 年最高法院法令》第 84 條 (註 4)	- 律政司；或 - “感到受屈的人”，即任何已提起的無理纏擾的法律程序所針對的人	沒有
澳洲的其他州				
5.	高等法院	《2004 年高等法院規則》第 6.06 號規則 (註 5)	- 律政專員； - 澳洲政府律師； - 首席司法常務官； - 法院；或 - 法官	沒有
6.	昆士蘭州	《2005 年無理纏擾的法律程序法令》第 5-6 條及附表 (註 6)	- 法庭主動提出； - 律政司； - 政府律師； - 法院司法常務官 - (如獲法庭許可) 被另一人提起或進行	“無理纏擾的法律程序”之定義包括： (a) 濫用法庭/審裁處程序的法律程序； (b) 引起騷擾或滋擾、延誤或損害、或另一不當目

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			的無理纏擾的法律程序所針對的人； - (如獲法庭許可)在事件中有充分利害關係的人	的而提起的法律程序； (c) 沒有合理理據而提起或繼續的法律程序；及 (d) 進行時引致騷擾或滋擾、造成延誤或損害、或達到任何其他不當目的之法律程序
7.	西澳大利亞州	《2002 年無理纏擾的法律程序之限制法令》第 3 及 4 條 (註 7)	- 法庭主動提出； - 律政司； - 最高法院的首席司法常務官； - 地方法院的首席司法常務官； - (如獲法庭許可)被另一人提起或進行的無理纏擾的法律程序所針對的人；或 - (如獲法庭許可)在事件中有充分利害關係的人	“無理纏擾的法律程序”是指： (a) 濫用法庭/審裁處程序的法律程序； (b) 為騷擾或滋擾、造成延誤或損害、或任何其他不當之目的而提起的法律程； (c) 沒有合理理據而提起或繼續的法律程序；及 (d) 進行時引起騷擾或滋擾、造成延誤或損害、或達到任何其他不當目的之法律程序
8.	澳北區	《2006 年無理纏擾的法律程序法令》第 2 & 7 條 (註 8)	- 法庭主動提出； - 律政司； - 法律政策專員； - 法院司法常務官； - (如獲法庭許可)任何被已提起或進行的無理纏擾的法律程序所針對的人；或 - (如獲法庭許可)任何在事件中有充分利害關係的人。	“無理纏擾的法律程序”包括： (a) 濫用法庭/審裁處程序的法律程序； (b) 為騷擾或滋擾、造成延誤或損害、或任何其他不當之目的而提起的法律程； (c) 沒有合理理據而提起或繼續的法律程序；及 (d) 進行時引起騷擾或滋擾、造成延誤或損害、或達到任何其他不當目的之法律程序

項次	司法管轄區	有關法例	誰可提出申請？	有否為“無理纏擾的法律程序/ 訴訟人”下定義？
9.	維多利亞州	《1986年最高法院法令》第21條 (註9)	律政司	沒有
10.	南澳大利亞州	《1935年最高法院法令》第39條 (註10)	- 律政司；或 - 任何其他有利害關係的人 (註：若訂明的法庭認為有恰當的理由，可將有關個案轉介律政司考慮)	沒有
11.	塔斯馬尼亞州	《1932年最高法院民事訴訟程序法令》第194G條 (註11)	- 律政司； - 法律政策專員 - 刑事檢控專員； - 司法常務官；或 - 法院或法官認為在事件中有充分利害關係的任何人	沒有
12.	澳大利亞首都直轄區	《1933年最高法院法令》第s.67A條 (註12)	- 律政司；或 - “感到受屈的人” (即因該等法律程序提起而感到受屈的人)	“無理纏擾的法律程序”指有關的法律程序： (a) 之目的為引起騷擾或滋擾、造成延誤或損害、或其他不可告人之目的；或 (b) 缺乏合理理據

註

1. 英格蘭及威爾斯 - 《1981年最高法院法令》

Section 42 - Restriction of vexatious legal proceedings

(1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground—

- (a) instituted vexatious civil proceedings, whether in the High Court or any inferior court, and whether against the same person or against different persons; or
- (b) made vexatious applications in any civil proceedings, whether in the High Court or any inferior court, and whether instituted by him or another, or
- (c) instituted vexatious prosecutions (whether against the same person or different persons), the court may, after hearing that person or giving him an opportunity of being heard, make a civil proceedings order, a criminal proceedings order or an all proceedings order.

(1A) In this section—

“civil proceedings order” means an order that—

- (a) no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;
- (b) any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and
- (c) no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;

“criminal proceedings order” means an order that—

- (a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and
- (b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and

“all proceedings order” means an order which has the combined effect of the two other orders.]

(2) An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(3) Leave for the institution or continuance of, or for the making of an application in, any civil proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application.

(3A) Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.

- (4) No appeal shall lie from a decision of the High Court refusing leave required by virtue of this section.
- (5) A copy of any order made under subsection (1) shall be published in the London Gazette.

2. 新西蘭 - 《1965 年司法法令》

Section 88B - Restriction on institution of vexatious actions

(1) If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior Court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order that no civil proceeding or no civil proceeding against any particular person or persons shall without the leave of the High Court or a Judge thereof be instituted by him in any Court and that any civil proceeding instituted by him in any Court before the making of the order shall not be continued by him without such leave.

(2) Leave may be granted subject to such conditions (if any) as the Court or Judge thinks fit and shall not be granted unless the Court or Judge is satisfied that the proceeding is not an abuse of the process of the Court and that there is prima facie ground for the proceeding.

(3) No appeal shall lie from an order granting or refusing such leave.

N.B. The above was originally s88A but was re-numbered to s88B by Judicature Amendment Act (No 2) 2005.

3. 加拿大（安大略省） - 《1990 年法院法令》

Section 140 - Vexatious proceedings

(1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,

- (a) instituted vexatious proceedings in any court; or
- (b) conducted a proceeding in any court in a vexatious manner,

the judge may order that,

- (c) no further proceeding be instituted by the person in any court; or
- (d) a proceeding previously instituted by the person in any court not be continued,

except by leave of a judge of the Superior Court of Justice.

(2) Repealed: 1998, c. 18, Sched. B, s. 5 (2).

Application for leave to proceed

(3) Where a person against whom an order under subsection (1) has been made seeks leave to institute or continue a proceeding, the person shall do so by way of an application in the Superior Court of Justice.

Leave to proceed

- (4) Where an application for leave is made under subsection (3),
- (a) leave shall be granted only if the court is satisfied that the proceeding sought to be instituted or continued is not an abuse of process and that there are reasonable grounds for the proceeding;
 - (b) the person making the application for leave may seek the rescission of the order made under subsection (1) but may not seek any other relief on the application;
 - (c) the court may rescind the order made under subsection (1);
 - (d) the Attorney General is entitled to be heard on the application; and
 - (e) no appeal lies from a refusal to grant relief to the applicant.

Abuse of process

- (5) Nothing in this section limits the authority of a court to stay or dismiss a proceeding as an abuse of process or on any other ground.

4. 澳洲 (新南威爾士州) - 《1970 年最高法院法令》

Section 84 - Vexatious litigant

(1) Where any person (in this subsection called the “vexatious litigant”) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings, whether in the Court or in any inferior court, and whether against the same person or against different persons, the Court may, on application by the Attorney General, order that the vexatious litigant shall not, without leave of the Court, institute any legal proceedings in any court and that any legal proceedings instituted by the vexatious litigant in any court before the making of the order shall not be continued by the vexatious litigant without leave of the Court.

(2) Where any person (in this subsection called the “vexatious litigant”) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings against any person (in this subsection called the “person aggrieved”), whether in the Court or in any inferior court, the Court may, on application by the person aggrieved, order that the vexatious litigant shall not, without leave of the Court, institute any legal proceedings against the person aggrieved in any court and that any legal proceedings instituted by the vexatious litigant against the person aggrieved in any court before the making of the order shall not be continued by the vexatious litigant without leave of the Court.

(3) The Court may from time to time rescind or vary any order made by it under subsection (1) or subsection (2).

(4) Where the Court has made an order under subsection (1) or subsection (2) against any person, the Court shall not give that person leave to institute or continue any proceedings unless the Court is satisfied that the proceedings are not an abuse of process and that there is prima facie ground for the proceedings.

5. 澳洲高等法院《2004年高等法院規則》

Vexatious proceedings

6.06.1 Upon the application of a Law Officer, the Australian Government Solicitor, or the Principal Registrar, the Court or a Justice, if satisfied that a person, alone or in concert with any other, frequently and without reasonable ground has instituted or has attempted to institute vexatious legal proceedings may, having given that person an opportunity to be heard, order that he or she shall not, without the leave of the Court or a Justice, commence any proceeding or make any application in the original or the appellate jurisdiction of the Court.

6.06.2 Leave shall not be given under this rule unless the Court or a Justice is satisfied that the proposed proceeding or application is not an abuse of the process of the Court and that there is prima facie ground for the proceeding.

6. 澳洲昆士蘭州 - 《2005年無理纏擾的法律程序法令》

5. Applications for vexatious proceedings orders

(1) Any of the following persons may apply to the Court for a vexatious proceedings order in relation to a person mentioned in section 6(1)(a) or (b)--

- (a) the Attorney-General;
- (b) the Crown solicitor;
- (c) the registrar of the Court;
- (d) a person against whom another person has instituted or conducted a vexatious proceeding;
- (e) a person who has a sufficient interest in the matter.

(2) An application may be made by a person mentioned in subsection (1)(d) or (e) only with the leave of the Court.

6. Making vexatious proceedings orders

(1) This section applies if the Court is satisfied that a person is--

- (a) a person who has frequently instituted or conducted vexatious proceedings in Australia; or
- (a) a person who, acting in concert with a person who is subject to a vexatious proceedings order or who is mentioned in paragraph (a), has instituted or conducted a vexatious proceeding in Australia.

(2) The Court may make any or all of the following orders--

- (a) an order staying all or part of any proceeding in Queensland already instituted by the person;
- (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland;
- (c) any other order the Court considers appropriate in relation to the person.

Examples of another order for paragraph (c)--

an order directing that the person may only file documents by mail

an order to give security for costs

an order for costs

(3) The Court may make a vexatious proceedings order on its own initiative or on the application of a person mentioned in section 5(1).

- (4) The Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (5) For subsection (1), the Court may have regard to--
- (a) proceedings instituted or conducted in any Australian court or tribunal, including proceedings instituted or conducted before the commencement of this section; and
 - (b) orders made by any Australian court or tribunal, including orders made before the commencement of this section.

Schedule - Dictionary

“*Vexatious proceeding*” includes --

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued without reasonable ground; and
- (d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

“*vexatious proceedings order*” means an order made under section 6(2).

7. 澳洲西澳大利亞州 - 《2002年無理纏擾的法律程序之限制法令》

3. Interpretation

“*vexatious proceedings*” means proceedings —

- (a) which are an abuse of the process of a court or a tribunal;
- (b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;
- (c) instituted or pursued without reasonable ground; or
- (d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose.

4. Restriction of vexatious proceedings

(1) If a Court is satisfied that —

- (a) a person has instituted or conducted vexatious proceedings (whether before or after the commencement of this Act); or
- (b) it is likely that the person will institute or conduct vexatious proceedings,

the Court may make either or both of the following orders —

- (c) an order staying any proceedings, either as to the whole or part of the proceedings, that have been instituted by that person;
- (d) an order prohibiting that person from instituting proceedings, or proceedings of a particular class, without the leave of a court or tribunal, as the case requires under section 6(1).

(2) An order under subsection (1) may be made by the Court on its own motion or on the application of —

- (a) the Attorney General;
 - (b) the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court; or
 - (c) with the leave of the Court —
 - (i) a person against whom another person has instituted or conducted vexatious proceedings; or
 - (ii) a person who has a sufficient interest in the matter.
- (3) The Court must not make an order under subsection (1) —
- (a) staying any proceedings that have been instituted by a person, either as to the whole or part of the proceedings; or
 - (b) prohibiting a person from instituting proceedings, or proceedings of a particular class, without hearing that person or giving that person an opportunity of being heard.

8. 澳洲澳北區 - 《2006年無理纏擾的法律程序法令》

2. Definitions

“**vexatious proceedings**” includes:

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued without reasonable ground; and
- (d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose;

7. Making vexatious proceedings orders

- (1) This section applies if the Court is satisfied a person:
- (a) has frequently instituted or conducted vexatious proceedings in Australia; or
 - (b) acting in concert with someone who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted vexatious proceedings in Australia.
- (2) For subsection (1), the Court may have regard to:
- (a) proceedings in any court or tribunal, including proceedings instituted before the commencement of this section; and
 - (b) orders made by any court or tribunal, including orders made before the commencement of this section.
- (3) The Court may make:
- (a) either or both of the following orders:
 - (i) an order staying all or part of any proceedings in the Territory already instituted by the person;
 - (ii) an order prohibiting the person from instituting proceedings in the Territory; and
 - (b) another order the Court considers appropriate.
- (4) If the Court makes an order prohibiting the person from instituting proceedings in the Territory:

- (a) the person must not institute proceedings in the Territory without the leave of the Court under section 13; and
 - (b) no one else must, acting in concert with the person, institute proceedings in the Territory without the leave of the Court under section 13.
- (5) The Court must not make a vexatious proceedings order without hearing the person or giving the person an opportunity of being heard.
- (6) The Court may make a vexatious proceedings order on its own initiative or on the application of any of the following:
- (a) the Attorney-General;
 - (b) the Solicitor-General;
 - (c) a Registrar of the Court;
 - (d) anyone against whom, in the Court's opinion, the person has instituted or conducted vexatious proceedings;
 - (e) anyone who, in the Court's opinion, has a sufficient interest in the matter.
- (7) An application may be made by a person mentioned in subsection (6)(d) or (e) only with the leave of the Court.

9. 澳洲維多利亞州 - 《1986年最高法院法令》

21. Vexatious litigants

- (1) The Attorney-General may apply to the Court for an order declaring a person to be a vexatious litigant.
- (2) The Court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied that the person has-
- (a) habitually; and
 - (b) persistently; and
 - (c) without any reasonable ground -
- instituted vexatious legal proceedings (whether civil or criminal) in the Court, an inferior court or a tribunal against the same person or different persons.
- (3) An order under subsection (2) may provide that the vexatious litigant must not without leave of-
- (a) the Court; or
 - (b) an inferior court; or
 - (c) a tribunal constituted or presided over by a person who is an Australian lawyer-
- do the following-
- (d) continue any legal proceedings (whether civil or criminal) in the Court, inferior court or tribunal; or
 - (e) commence any legal proceedings (whether civil or criminal) in the Court or any specified inferior court or tribunal; or
 - (f) commence any specified type of legal proceedings (whether civil or criminal) in the Court or any specified inferior court or tribunal.

- (4) Leave must not be given unless the Court, or if the order under subsection (2) so provides, the inferior court or tribunal is satisfied that the proceedings are not or will not be an abuse of the process of the Court, inferior court or tribunal.
- (5) The Court may at any time vary, set aside or revoke an order made under subsection (2) if it considers it proper to do so.
- (6) The Attorney-General must cause a copy of any order made under subsection (2) to be published in the Government Gazette.
- (7) The Court, when exercising a power under this section, must be constituted by a Judge.
- (8) The Court may, in determining whether to make an order under subsection (2), take into account vexatious legal proceedings (whether civil or criminal) instituted before or after the commencement of the Supreme Court (Vexatious Litigants) Act 2003.

10. 澳洲南澳大利亞洲 - 《1935 年最高法院法令》

39. Vexatious proceedings

- (1) If, on the application of the Attorney-General or any other interested person, the court is satisfied that a person has persistently instituted vexatious proceedings, the court may make either or both of the following orders:
 - (a) an order prohibiting the person by whom the vexatious proceedings were instituted from instituting further proceedings, or further proceedings of a particular class, without permission of the court;
 - (b) an order staying proceedings already instituted by that person.
- (2) Where it appears to a prescribed court that there are proper grounds for an application under this section, it may refer the matter to the Attorney-General for consideration.
- (3) An order under this section remains in force (subject to variation by the court)—
 - (a) if a period for the operation of the order is fixed—until the expiration of that period or the revocation of the order (whichever first occurs);
 - (b) if no such period is fixed—until revocation of the order.
- (4) Where an order is made under this section, a copy of the order must be published in the Gazette.
- (5) For the purposes of this section, proceedings are vexatious—
 - (a) if instituted to harass or annoy, to cause delay, or for any other ulterior purpose; or
 - (b) if instituted without reasonable ground.
- (6) In this section—

“prescribed court” means—

 - (a) the Supreme Court; or
 - (b) any other court of the State; or

- (c) the Workers Compensation Tribunal; or
 - (d) any other tribunal of the State prescribed by the regulations;
- “proceedings” means civil or criminal proceedings instituted in a prescribed court.

11. 澳洲塔斯馬尼亞洲 - 《1932年最高法院民事訴訟程序法令》

194G. Vexatious litigants

- (1) If, on an application under this section, the Court is satisfied that a person has persistently and without reasonable grounds instituted vexatious legal proceedings, whether in the Court or any inferior court and whether against the same person or against different persons, the Court, after hearing that person or giving him or her an opportunity of being heard, may, by order, declare that person to be a vexatious litigant.
- (2) Where an order declaring a person to be a vexatious litigant is in force under subsection (1), no legal proceedings are, without the leave of the Court or a judge, to be instituted by him or her in the Court.
- (3) An application under subsection (1) may be made by the Attorney-General, the Solicitor-General, the Director of Public Prosecutions, the Registrar or any person who, in the opinion of the Court or a judge, has a sufficient interest in the matter.
- (4) If proceedings are pending in the Court when an order is made under subsection (1), those proceedings are taken to be stayed unless leave is given as mentioned in subsection (2).
- (5) Where proceedings pending in the court are taken to be stayed and the person declared to be a vexatious litigant has not applied for, or has not been granted, leave to proceed in those proceedings, any other party to those proceedings may apply to a judge for an order for the costs incurred by that party in those proceedings.
- (6) The Registrar must, within 14 days after an order is made under subsection (1), cause a copy of the order to be published in the Gazette.

12. 澳洲澳大利亞首都直轄區 - 《1933年最高法院法令》

67A Vexatious litigants

- (1) In this section:
 - aggrieved person*, in relation to proceedings, means a person aggrieved by the institution of those proceedings.
 - proceedings* means any cause, matter, action, suit or proceeding of any other kind within the jurisdiction of any court or tribunal and includes any proceeding taken in connection with any such legal proceedings pending before any court or tribunal.
 - vexatious proceedings* means proceedings—
 - (a) the purpose of which is to harass or annoy, to cause delay or for some other ulterior purpose; or

- (b) that lack reasonable grounds.
 - (2) If, on the application of the Attorney-General or an aggrieved person, the court is satisfied that a person has frequently instituted vexatious proceedings, the court may declare the person to be a vexatious litigant.
 - (3) A declaration may be expressed to apply only in relation to a particular type of matter.
 - (4) A declaration may be expressed to be subject to the conditions the court considers appropriate.
 - (5) If a person is declared to be a vexatious litigant—
 - (a) the person, or a person acting in concert with the person, shall not institute or continue any proceedings or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, without the leave of the court; and
 - (b) any proceedings pending at the time of the declaration or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, are stayed subject to any order of the court in relation to those proceedings.
 - (6) If the court gives leave to a person for subsection (5) (a), it may impose the conditions it considers appropriate.
 - (7) Conditions imposed under subsection (6) in relation to proceedings may include conditions—
 - (a) relating to security for costs in the proceedings; and
 - (b) specifying matters relating to the issue of process in the proceedings.
 - (8) Unless expressed to remain in force until the end of a date specified in the declaration, a declaration remains in force until revoked by the court.
 - (9) The court may vary a declaration.
 - (10) Subject to any order of the court, an order making, varying or revoking a declaration is a notifiable instrument.
Note A notifiable instrument must be notified under the Legislation Act 2001.
 - (11) If proceedings are instituted by a person in contravention of this section, the proceedings shall be taken to have been permanently stayed.
 - (12) If practicable, any documents filed or lodged with a court or tribunal by a person in proceedings referred to in subsection (11) shall be returned to the person by the registrar or similar officer of a court or tribunal.
 - (13) Notwithstanding subsection (5), a person declared to be a vexatious litigant may, without the leave of the court, apply to the court for the revocation or variation of the declaration or of any conditions to which the declaration is subject.
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