

CJRB 6/2007

**Bills Committee on  
Civil Justice (Miscellaneous Amendments) Bill 2007**

**Response to the Issues Raised by the  
Legal Service Division of the Legislative Council**

**Purpose**

This paper sets out the response from the Administration/Judiciary Administration to the issues raised by the Assistant Legal Adviser (“ALA”) to the Bills Committee in her letters dated 12.6.2007 and 17.7.2007. It must be emphasised that where views on the law are expressed herein, such views are not to be taken as statements of law by the courts. Judicial determinations or statements of law may only be made in actual cases that come before the courts after hearing argument.

**Part 5 – Vexatious Litigants**

- A. To provide information about the legislation on prevention of vexatious litigation in other common law jurisdictions, in particular –**
- (a) whether in addition to the law officer (e.g. Secretary for Justice, Attorney General, Law Officer, etc.), a party and/or non-party to the proceedings may apply for an order to restrain a vexatious litigant from instituting or continuing proceedings;**
  - (b) whether the term “vexatious proceedings / litigants” is defined in their law; and**
  - (c) whether application may be made against a litigant if the litigant has issued the proceedings with the benefit of legal advice by a qualified legal practitioner.**

**To also provide copy of the relevant overseas legislation.**

2. Re items (a) and (b) of ALA’s question above, research has been conducted on legislation on prevention of vexatious proceedings in four common law jurisdictions, namely -

- (a) England and Wales;
- (b) New Zealand;
- (c) Canada (Ontario); and
- (d) Australia.

3. The relevant information as to (i) who may apply for a vexatious litigant order, and (ii) whether the term “vexatious proceedings / litigants” is defined is summarised below. Detailed findings and the relevant provisions are at **Annex**.

**Annex**

<b>Jurisdiction</b>	<b>Who may apply?</b>	<b>“Vexatious proceedings / litigants” defined?</b>
England & Wales	Attorney General	No
New Zealand	Attorney General	No
Canada (Ontario)	Not specified	No
Australia	<p>In seven States / Territories (except Victoria and application to the High Court), persons other than the law officer may apply. The terminologies used may be different, but generally, such other persons include -</p> <ul style="list-style-type: none"> <li>- an “aggrieved person”;</li> <li>- person against whom vexatious legal proceedings have been instituted;</li> <li>- person who has a sufficient interest in the matter.</li> </ul>	<p>The term “vexatious proceeding(s)” is defined in four States / Territories, namely –</p> <ul style="list-style-type: none"> <li>(i) Queensland;</li> <li>(ii) Western Australia;</li> <li>(iii) Northern Territory; and</li> <li>(iv) Australian Capital Territory.</li> </ul>

4. As to item (c) of ALA's question above, it appears from our research findings that the legislation in other common law jurisdictions does not have express provisions regarding different considerations to be applied to an application for a vexatious litigant order against a litigant who has issued the proceedings with the benefit of legal advice by a qualified legal practitioner. In Hong Kong, the test for an order under section 27 of the HCO is the same whether or not the subject has had legal advice. There is no reason for different treatment whether or not a vexatious litigant has been legally advised. The matter is viewed objectively.

**B. Since any party to the proceedings or any person who alleges that he has directly suffered adverse consequences resulting from such proceedings may apply for an order under the proposed section 27 of the HCO, is there any safeguard to prevent unmeritorious applications under the proposed section 27?**

5. Under the proposed section 27, any person falling within the meaning of "affected person" under the proposed section 27(5) may apply for a vexatious litigant order, without any leave requirement. It was originally considered that some safeguard could be provided by the exercise of the Court's discretion in dealing with such applications in accordance with the stringent requirements in section 27. Any abuse of the new provision may be addressed to by a suitable costs order.

6. Having researched into the relevant legislation on vexatious proceedings in other common law jurisdictions (see **Annex**), it is noted that in Queensland, Western Australia and Northern Territory of Australia, leave of the court is required for lay persons (i.e. other than the law officers and the Registrar) to apply for a vexatious litigant order.

**Annex**

7. As rightly pointed out by ALA, the object of Part 5 of the Bill is to screen out vexatious litigation, thereby enabling fairer distribution of the court's resources for genuine disputes. It is considered that the introduction of a leave requirement for "affected persons" applying for a vexatious litigant order should provide a proper safeguard to prevent unmeritorious applications under the proposed section 27. Subject to Members' views, the Administration will propose Committee Stage Amendments to the proposed section 27 to introduce a leave requirement for applications from affected persons.

## **Part 6 – Discovery**

### **C. What is the difference between “*directly relevant*” and “*relevant*” documents under the proposed and existing legislation respectively?**

8. As pointed out by ALA, the term “relevant” in the existing legislation has been interpreted as having the same meaning as “relating to a matter in question” under Order 24, rule 1 of the Rules of the High Court (“RHC”) (Cap. 4A) (see *Chan Tam-sze & Ors v Hip Hing Construction Co Ltd & Ors* [1990] 1 HKLR 473). Documents which are covered by this term would therefore extend to documents which might fairly lead to a train of inquiry in the *Peruvian Guano* sense.

9. By contrast, the use of the term “directly relevant” and its definition in section 41(2) in the Bill is intended to narrow the scope of pre-action disclosure by excluding “train of inquiry” or background documents. The use of this term and its definition are intended to reflect recommendations 75 and 77 of the Working Party on Civil Justice Reform. As stated in paragraph 487 of the Final Report, “[i-]t is considered that such a rule strikes a reasonable balance between the need to protect against harassment and fishing applications on the one hand and the need to enable a potentially meritorious plaintiff to bring a claim which could not effectively otherwise be brought”.

### **D. Please provide some specific examples of the type of documents, in a personal injury (“PI”) claim, which are “relevant” documents but not “directly relevant” documents.**

10. It is not possible to be categorical about whether particular documents in a given case would be of direct relevance so as to be susceptible to pre-action disclosure or would be regarded as being of relevance only in a background or train of inquiry sense. In any given case, the answer to this question will depend on the circumstances of the claim being advanced.

**E. Will potential claimants in PI claims have to meet a new test with respect to the relevance of the documents being sought before they may be granted an order of pre-action discovery? If this is the case, please let the Bills Committee have the reasons for the change.**

11. The effect of the proposed amendments will be that all applications for pre-action disclosure will have to satisfy the new test. There will therefore be a change to the test which potential claimants in PI claims will have to satisfy, in that they will be required to meet the new, somewhat stricter, test of “direct relevance”. Nevertheless, it may be relevant to note that the concept of “directly relevant” is already set out (although not defined) in the existing Practice Direction 18.1 on the procedures of the PI List. Paragraph 7 of Practice Direction 18.1 states -

“... In considering whether to make any order for specific discovery or disclosure, the court will have regard to ... whether the documents and matters sought to be discovered or disclosed are strictly and directly relevant to the issues between the parties.” – *emphasis added*.

12. It was considered by the Steering Committee, following consultation on an earlier draft bill issued in April 2006, that it would be preferable to have a single, unified, test for all applications for pre-action disclosure. It is difficult to see why there should be a laxer test for pre-action disclosure in PI claims, but a tighter one for other claims. In both situations, the purpose of ordering pre-action disclosure is the same – namely, to enable the intending plaintiff to ascertain whether or not he has a viable claim. It is thought that disclosure of documentation falling within the proposed test will suffice for this purpose.

**Administration Wing  
Chief Secretary for Administration’s Office**

**Judiciary Administration**

**September 2007**

## Legislation Concerning Vexatious Proceedings in Various Common Law Jurisdictions

Serial No.	Jurisdiction	Relevant Legislation	Who may apply?	“Vexatious proceedings/litigants” defined?
1.	England & Wales	s.42 of the Supreme Court Act 1981 <b>(Note 1)</b>	Attorney General	No
2.	New Zealand	s.88B of the Judicature Act 1965, as amended by the Judicature Amendment Act (No.2) 2005 <b>(Note 2)</b>	Attorney General	No
3.	Canada (Ontario)	s.140 of the Courts of Justice Act 1990 <b>(Note 3)</b>	Not specified	No
4.	Australia (New South Wales)	s.84 of the Supreme Court Act 1970 <b>(Note 4)</b>	<ul style="list-style-type: none"> <li>- the Attorney-General; or</li> <li>- “person aggrieved”, i.e. any person against whom vexatious legal proceedings have been instituted</li> </ul>	No
<b>Other States of Australia</b>				
5.	High Court	Reg.6.06 of the High Court Rules 2004 <b>(Note 5)</b>	<ul style="list-style-type: none"> <li>- a Law Officer;</li> <li>- the Australian Government Solicitor;</li> <li>- the Principal Registrar;</li> <li>- the Court; or</li> <li>- a Justice</li> </ul>	No

Serial No.	Jurisdiction	Relevant Legislation	Who may apply?	“Vexatious proceedings/litigants” defined?
6.	Queensland	ss.5-6 & Schedule of Vexatious Proceedings Act 2005 <b>(Note 6)</b>	<ul style="list-style-type: none"> <li>- the Court on own motion;</li> <li>- the Attorney-General;</li> <li>- the Crown Solicitor;</li> <li>- the registrar of the Court;</li> <li>- (with leave of court) a person against whom another person has instituted or conducted a vexatious proceeding;</li> <li>- (with leave of court) a person who has a sufficient interest in the matter</li> </ul>	<p>“<b>vexatious proceeding</b>” is defined to include:</p> <ul style="list-style-type: none"> <li>(a) a proceeding that is an abuse of the process of a court/tribunal;</li> <li>(b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose;</li> <li>(c) a proceeding instituted or pursued without reasonable ground; and</li> <li>(d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose</li> </ul>
7.	Western Australia	ss.3 and 4 of the Vexatious Proceedings Restriction Act 2002 <b>(Note 7)</b>	<ul style="list-style-type: none"> <li>- The Court on its own motion;</li> <li>- the Attorney General;</li> <li>- the Principal Registrar of the Supreme Court;</li> <li>- the Principal Registrar of the District Court;</li> <li>- (with leave of court) a person against whom another person has instituted or conducted vexatious proceedings;</li> <li>or</li> <li>- (with leave of court) a person who has a sufficient interest in the matter.</li> </ul>	<p>“<b>vexatious proceedings</b>” means proceedings:</p> <ul style="list-style-type: none"> <li>(a) which are an abuse of the process of a court/tribunal;</li> <li>(b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;</li> <li>(c) instituted or pursued without reasonable ground; or</li> <li>(d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose</li> </ul>
8.	Northern Territory	ss.2 & 7 of Vexatious Proceedings Act 2006 <b>(Note 8)</b>	<ul style="list-style-type: none"> <li>- The Court on its own initiative;</li> <li>- the Attorney-General;</li> <li>- the Solicitor-General;</li> <li>- a Registrar of the Court;</li> <li>- (with leave of court) anyone against whom the person has instituted or conducted vexatious</li> </ul>	<p>“<b>vexatious proceeding</b>” includes:</p> <ul style="list-style-type: none"> <li>(a) a proceeding that is an abuse of the process of a court/tribunal;</li> <li>(b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose;</li> </ul>

Serial No.	Jurisdiction	Relevant Legislation	Who may apply?	“Vexatious proceedings/litigants” defined?
			proceedings; or - (with leave of court) anyone who has a sufficient interest in the matter	(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
9.	Victoria	s.21 of the Supreme Court Act 1986 (Note 9)	Attorney-General	No
10.	South Australia	s.39 of the Supreme Court Act 1935 (Note 10)	- the Attorney-General; or - any other interested person (Note: a prescribed court may refer a matter to AG for consideration where it appears to it that there are proper grounds)	No
11.	Tasmania	s.194G of the Supreme Court Civil Procedure Act 1932 (Note 11)	- 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	No
12.	Australian Capital Territory	s.67A of the Supreme Court Act 1933 (Note 12)	- the Attorney-General; or - an “aggrieved person” (i.e. a person aggrieved by the institution of those proceedings)	“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 lacks reasonable grounds



## Notes

### **1. England and Wales - Supreme Court Act 1981**

#### **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. New Zealand - Judicature Act 1965**

### **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. Canada Ontario - Courts of Justice Act 1990**

### **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. Australia - New South Wales – Supreme Court Act 1970**

##### **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. Australia High Court Rules 2004**

### **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. Queensland Vexatious Proceedings Act 2005**

### **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. Western Australia Vexatious Proceedings Restriction Act 2002**

### **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. Northern Territory Vexatious Proceedings Act 2006**

### **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. Victoria Supreme Court Act 1986**

### **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. South Australia Supreme Court Act 1935**

### **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. Tasmania Supreme Court Civil Procedure Act 1932**

### **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. Australian Capital Territory Supreme Court Act 1933**

### **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.
-