

LAW REFORM COMMITTEE

INQUIRY INTO VEXATIOUS LITIGANTS

ISSUES PAPER APRIL 2008



PARLIAMENT



OF VICTORIA

INQUIRY INTO VEXATIOUS LITIGANTS

The right of people to go to court to seek redress is a key feature of democratic societies governed by the rule of law.

However, most court systems report a small number of people who appear to abuse this right by repeatedly bringing vexatious litigation in the courts. Some bring repeated litigation against the same person while others target a series of different people.

The Victorian Parliament passed laws to deal with 'vexatious litigants' in 1928.

The laws are set out in section 21 of the *Supreme Court Act 1986* (Vic). They attempt to strike a balance between the right of people to access the courts and the need to protect other parties and the justice system itself from repeated vexatious litigation.

The laws give the Supreme Court of Victoria the power to declare a person a vexatious litigant if the Court is satisfied that the person has 'habitually', 'persistently' and 'without any reasonable ground' brought vexatious legal proceedings in a court or tribunal. The Supreme Court has interpreted 'vexatious' in this context to mean proceedings that are brought for an improper purpose or which are revealed to be hopeless.

The result of a declaration is that the person has to get leave or permission from the Supreme Court (or another court or tribunal in some cases) before he or she can continue existing litigation or bring new litigation. The laws state that a court or tribunal can only give leave to a vexatious litigant if it is satisfied that the litigation is not or will not be an 'abuse of process'.

The Attorney-General is the only person in Victoria who can ask the Supreme Court to declare a person a vexatious litigant under the laws.

The Supreme Court of Victoria has declared 14 people to be vexatious litigants since 1928.

THE LAW REFORM COMMITTEE'S INQUIRY INTO VEXATIOUS LITIGANTS

The Victorian Parliament has asked the Law Reform Committee to inquire into and report on the effect of vexatious litigants on the justice system and the individuals and agencies who are victims of vexatious litigants.

The terms of reference for the inquiry require the Committee to:

- a) inquire into the effectiveness of current legislative provisions in dealing with vexatious litigants
- b) make recommendations which better enable the courts to more efficiently and effectively perform their role while preserving the community's general right of access to the Victorian courts.

TELL THE COMMITTEE WHAT YOU THINK

The Committee is interested in the views of Victorians about these issues.

The Committee is seeking written comments and submissions from individuals and organisations at this stage. After considering this information, the Committee will hold public hearings in mid-2008. The Committee will then prepare a written report, including recommendations to the Victorian Government for change, for presentation to the Victorian Parliament by 4 December 2008.

Anyone can send written comments or a submission to the Committee by email to:

vplrc@parliament.vic.gov.au

or by mail to:

**Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
East Melbourne VIC 3002**

If you send comments or a submission by email you should include at least one piece of information that verifies your identity, such as a contact telephone number or an address.

Written comments or submission do not have to follow any particular format. They can take the form of a letter, a short paper or a longer research document.

If you would like to contribute, you should read the terms of reference for the inquiry carefully and make sure your comments are relevant to the inquiry. In particular, you should note that the Committee is investigating vexatious litigants in Victorian courts and tribunals, i.e. the Supreme Court, the County Court, the Magistrates' Court and the Victorian

Civil and Administrative Tribunal. The Committee is not inquiring into vexatious litigants in the High Court, the Federal Court, the Family Court or the Federal Magistrates Court, which are all federal courts.

The Committee has listed some questions to help guide comments and submissions at the end of this document but you do not have to answer all or any of those questions.

The deadline for written comments and submissions is **27 June 2008**.

All submissions will be treated as public documents and will be published on the Committee's website unless you request confidentiality.

ABOUT THE LAW REFORM COMMITTEE

The Law Reform Committee is a bipartisan committee made up of members of the Victorian Parliament. Its role is to inquire into, consider and report to the Victorian Parliament on legal, constitutional and parliamentary reform, the administration of justice and law reform.

The members of the Committee are:

- Mr Johan Scheffer MLC (Chair)
- Mr Robert Clark MLA (Deputy Chair)
- Mr Colin Brooks MLA
- Mr Luke Donnellan MLA
- Mr Martin Foley MLA
- Mrs Jan Kronberg MLC
- Mr Edward O'Donohue MLC

FURTHER INFORMATION

For further information or assistance, you can contact the Committee by

E-mail: vpirc@parliament.vic.gov.au

Phone: **03 8682 2851**

or visit our website at

www.parliament.vic.gov.au/lawreform

QUESTIONS AND ISSUES

Vexatious litigants in Victoria

- How common are vexatious litigants in Victoria's courts and tribunals?
- Are vexatious litigants more common in some courts or tribunals, or in some types of legal disputes, than others?
- Why do you think some people become vexatious litigants? Do they try to solve their legal disputes in other ways before going to court? If so, are there features from their previous attempts to solve disputes that contribute to them becoming vexatious litigants?
- Do vexatious litigants have any common characteristics?
- In 2007 the Victorian Law Reform Commission suggested that the Victorian Parliament Law Reform Committee should consider the relationship between mental health and vexatious litigation. What is the relationship, if any, between mental health and vexatious litigation?

The effect of vexatious litigants on the justice system

- What effect do vexatious litigants have on courts and tribunals in Victoria? What are the costs for courts and tribunals?
- What effect do they have on judges and tribunal members, court staff, lawyers and witnesses?

The effect on individuals and agencies who are victims of vexatious litigants

- What effect do vexatious litigants have on the individuals or organisations who are victims of their conduct?
- If you think you or your organisation has been the victim of a vexatious litigant, describe the impact on you. What were the financial costs? Were there other costs?

Applying for a declaration under Victoria's vexatious litigant laws

- Are there people in Victoria's courts and tribunals who are vexatious litigants, but have not been the subject of action under the vexatious litigant laws? If so, why do you think no action has been taken?
- If you think you or your organisation has been the victim of a vexatious litigant, did you take any action to have the person declared a vexatious litigant? If not, why not? What other action did you take?
- Does the community know enough about the fact that a person can be declared a vexatious litigant, and how? How could community awareness be improved?
- Should the Attorney-General be the only person who can apply to have a person declared a vexatious litigant? Who else should be able to apply, e.g. senior court staff or other parties to the litigation?
- Should courts and tribunals other than the Supreme Court have the power to declare a person a vexatious litigant? Should they be able to make a declaration on their own motion, i.e. without an application from another person?

QUESTIONS AND ISSUES (continued)

Who is a vexatious litigant under Victoria's laws?

- Does the law in Victoria make it too easy or too difficult for a person to be declared a vexatious litigant?
- What should the 'test' be for determining whether a person is a vexatious litigant? For example, should the test be that the person has brought vexatious legal proceedings 'frequently', rather than stricter test of 'habitually' and 'persistently'?
- Should the Supreme Court (or other courts and tribunals if appropriate) be able to consider other criteria? For example, should it be able consider:
 - the way the person has conducted the litigation?
 - the person's motive for bringing the litigation, e.g. whether the proceedings were brought to harass or annoy another person or to cause delay or detriment?
- Should the Supreme Court be able to take into account any interlocutory (or interim) applications that the person has brought during the litigation?

What rights should an alleged vexatious litigant have?

- What rights should an alleged vexatious litigant have when the Supreme Court (or other courts and tribunals if appropriate) hears an application? For example, should he or she have a right to free legal representation?
- What rights of appeal should a vexatious litigant have?

The powers of the court to control vexatious litigation

- Should the Supreme Court (or other courts and tribunals if appropriate) be able to make other orders to control vexatious litigants? For example, should it be able to:
 - impose conditions on the right of the person to continue or bring litigation, such as a power to order that the person cannot bring proceedings unless they are legally represented?
 - prevent a person from entering court premises?

The effect of a vexatious litigant declaration

- Are vexatious litigant declarations effective at stopping vexatious litigants? How do they try to press their claim after a declaration is made?
- Are there 'loopholes' in the laws that allow vexatious litigants to continue litigating, e.g. through relatives, friends or other associates? Should the Supreme Court be able to control litigation by people who act 'in concert' with a vexatious litigant?
- Does the law make it too easy or too difficult for a vexatious litigant to get leave from a court or tribunal to continue or bring litigation? For example, should the

vexatious litigant have to show that there are reasonable grounds for the litigation?

- Under the current law, a vexatious litigant can apply for leave ex parte (without the court or tribunal hearing from anyone else). Should the Attorney-General, or any other people, be notified when a vexatious litigant seeks leave? What rights should those people have?
- Should courts and tribunals be able to decide leave applications 'on the papers', without hearing from anyone in person?
- Should courts or tribunals be able to impose conditions when they grant leave to a vexatious litigant to bring litigation, e.g. should they be able to order the vexatious litigant to provide security for the likely legal costs of the defendant?
- Should vexatious litigants have a right of appeal when a court or tribunal refuses to grant leave?

Balancing rights and interests

- Victoria has a Charter of Human Rights and Responsibilities that, amongst other things, protects the rights of people to a fair hearing. Do you think Victoria's vexatious litigant laws strike the right balance between access to the courts and the need to protect other parties and the justice system from vexatious litigation?

Other ways to respond to vexatious litigants

- What other laws in Victoria could be used to respond to vexatious litigation and vexatious litigants? Are they used too little or too often?
- Are there any laws that would help courts and tribunals respond to vexatious litigants that should be introduced in Victoria?
- Is there any other action that courts and tribunals could take to manage vexatious litigants, e.g. should there be more guidelines or training for judges, tribunal members and court staff on how to deal with difficult litigants?
- Should courts and tribunals be able to refer vexatious litigants to support services? What kinds of support services would be required?
- How should the law, and courts and tribunals, respond to any mental health issues arising from vexatious litigation?

The impact of vexatious litigation in other federal, state and territory courts

- If a person is declared a vexatious litigant by a federal court or a court in another state or territory, what effect should that have in Victoria? For example:
 - should the declaration automatically apply in Victoria as well?
 - should the Supreme Court (or other courts and tribunals if appropriate) be able to take account of the person's litigation in federal or other state or territory courts when they are considering whether to declare the person a vexatious litigant in Victoria? ■