June 24, 2008

Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
EAST MELBOURNE, VIC. 3002

Dear Sir/Madam,

INQUIRY INTO VEXATIOUS LITIGANTS

The Wellington Shire has prepared a submission to the Law Reform Committee Inquiry into Vexatious Litigants, based on your Issues Paper of April 2008. A copy of the submission is attached for your information.

Council, like many organizations, experiences disruption to its activities, frustration of processes and considerable costs in dealing with people we would label as vexatious litigants. Unfortunately the current justice system seems to be unable to control or prevent the activities of these individuals.

It is felt that the conduct of the Inquiry offers some opportunities for the Law Reform Committee to recommend changes to Vexatious Litigant legislation that will make it more relevant to the challenges individuals and organizations face today in dealing with vexatious litigants.

Specifically, Council would like to see changes which:

- provide for simple, cheap and effective processes for individuals and organizations to protect themselves from vexatious litigants,
- recognise the impact of modern information/communication technology (internet, mobile telephones etc.)
- provide better balance between the rights of vexatious litigants and individuals and organizations, and
- provide for processes which are accessible locally.

Please contact Jim Wilson on (03) 5142 3353 should you require any further information, Council would like an opportunity to speak to the submission should this be possible.

Yours faithfully

LYNDON WEBB
Chief Executive Officer

Encl.
Submission

Council has perused your Inquiry into Vexatious Litigants Issues Paper April 2008 and wishes to offer some observations on the various issues that have been identified. Our comments are below:

Vexatious litigants in Victoria

The number of vexatious litigants in the system at any one time, or people Council might perceive to be in this category might be in the vicinity of three or four, with maybe six to ten per year.

Council observes that the nature of our jurisdiction which, at one level, encourages healthy debate within the confines of a democratic society, provides a low cost or free environment for vexatious litigants to operate in. Most Council and Committee meetings are open to the public under the Local Government Act. These meetings sometimes provide a platform for vexatious litigants to plead their cases.

People appear to become vexatious litigants for a range of reasons, some we have observed are:
- an unfavourable decision to the individual made by Council or its officers
- continued perceived slights related or not related to the original matter
- a perception that the “system” of which the Council is a part is against them
- crusader/battler convictions
- because they have diagnosed or undiagnosed mental illnesses.

Further to the comments above common characteristics of vexatious litigants would appear to be:

- Male
- Middle aged
- Socially marginalized
- “Bush lawyers”
- Mixture of knowledge and ignorance
- Opposed to the system
- Mental illness
- Not really financially driven
- Quixotic
- Alcoholic

Council’s experience suggests that there are strong links between mental illness and vexatious litigants.

The effect of vexatious litigants on the justice system

The effect of vexatious litigants on Council’s system is to slow down decision making and add additional costs, for example recent apparent court proceedings issued by a litigant necessitated Council seeking legal advice at a cost of $6,000 – in this particular case this is the third time we have sought advice, so total cost approaching $15,000.

Members of the community with bona fide issues requiring the attention of Council are discommoded while we divert our attention and resources to dealing with spurious claims. The impact is felt by Councillors, staff and the community.
The effect on individuals and agencies who are victims of vexatious litigants

Vexatious litigants have a significant effect on individuals and agencies such as ours, we believe that continuous exposure to litigants can be generally demoralizing and particularly demoralizing for those staff who have to deal directly with them.

Some litigants are quite threatening and in some cases have named staff and Councillors as individuals in their proceedings to the extent that they are wanting to seize their personal assets, such as their homes. Naturally, Councillors and staff are very concerned about this and may become quite distressed.

In terms of costs, there can be legal costs as outlined elsewhere in this submission, but vexatious litigants consume much organizational time. Often litigants become involved in regular and protracted meetings with staff in an effort to explain/resolve their issues, hence the time spent by staff dealing with these matters is very costly. Often agreed solutions slip away and resolution is never consummated.

As suggested earlier, it is Council’s perception that vexatious litigants are a regular and continuing problem.

Applying for a declaration under Victoria’s vexatious litigant laws

Council has, from time to time, sought legal advice to have individuals declared to be vexatious litigants, however our advice has been that the criteria for this is unattainable. Whilst in a technical sense and under the current law this may be so, knowing that in 80 years only 14 people have been declared vexatious litigants it may be that the test for declaration is too high.

Council would submit that lower level tests could be introduced to address the vexatious litigants that this Council and others suffer.

Council has tried to deal with vexatious litigants as best it can and often this will be by ignoring correspondence, although this does not sit well with our customer service ethic. Sometimes litigants tire and desist, however many persist for years and decades.

In terms of educating the community about the current vexatious litigant legislation, this would seem to be an unprofitable exercise and effort may be better spent in producing more effective modern legislation which meets the needs of organizations and individuals.

The requirement that the Attorney General is the only person able to declare someone a vexatious litigant seems to be too high a test. It is suggested that a local Magistrate might be better charged with this duty.

A local Magistrate would seem to have the legal training to balance the rights of alleged vexatious litigants and the organization/individual seeking a declaration and, it is suggested, could be in a position to approve/not approve an application. The Magistrate may often be aware of the activities of the alleged litigant since litigants seem to often be taking concurrent action against a range of local agencies.

A key factor for agencies is the cost of becoming involved in court processes to have vexatious litigants declared, having the local Magistrate as the arbiter might substantially reduce costs. Agencies do suffer from vexatious litigants and require low cost accessible avenues to properly process litigants.
Who is a vexatious litigant under Victoria's laws?

Under the current law in Victoria it seems to be generally too difficult for a person to be declared a vexatious litigant, with only 14 having been declared in 80 years. It does not seem likely that this is a true reflection of the number of these people in the system.

The suggestion that a “test” of “frequency” of proceedings is helpful, because typically a vexatious litigant makes many attempts to make their point, it is suggested that the purpose of the litigation is also worth considering – i.e. what is its purpose; often it seems to be about frustrating process rather than having any substantive merit/validity.

As suggested, the issue of motive by litigants is important, as is their state of mind etc.

What rights should an alleged vexatious litigant have?

A vexatious litigant should have all normal legal rights initially to defend themselves against being declared a vexatious litigant, however once a declaration has been made these rights should be suspended, including any right to free legal aid.

If a litigant was declared in, say, the Magistrates Court, an appeal to have that status removed could be heard in that jurisdiction or alternatively a higher one. Whilst justice is a right, the costs of action in higher courts can be very expensive and time consuming. Often the matters raised by Vexatious Litigants are not of substantial matters, but due to the nature of the litigants, are time consuming, difficult to process and of substantial cost to the courts and agencies or other parties.

The powers of the court to control vexatious litigation.

If the regime of controlling vexatious litigants is to be effective the court does need specific controls. Ideally, where it is established that a litigant is vexatious it would be useful if the court could prevent the litigant taking any further legal/administrative action as often litigants are attached to one issue and pursue it in various ways over a period of years.

The establishment of a threshold/barrier to litigation could be helpful in controlling vexatious litigants. The restriction on litigants to have legal representation seems a little discriminatory, but maybe could be a condition of all actions subsequent to the first.

Power for the court to prevent a person entering court premises seems to be desirable. It is further suggested that a court might also have the power to restrict vexatious litigants from access to the premises of individuals or agencies and or the power to similarly restrict contact from litigants to prevent harassment or intimidation.

The effect of a vexatious litigant declaration.

As alluded to above, from the Council’s perspective, our desire from a vexatious litigant declaration would be to prevent our involvement in costly litigation, either at court, or responding to correspondence with individuals, their legal representatives or relatives or friends which is often lengthy and voluminous. We would also see the prevention of litigants entering onto Council premises, contacting Council staff or Councillors or attending
Council meetings being of benefit. Council also advocates for similar restrictions on telephone contact.

A significant issue for us with the advent of communications technology is the ability of litigants to bombard staff and Councillors with emails. The medium lends itself to the sending of enormous numbers of messages to people who may or may not be parties to the issues. This facility often complicates and confounds processes for dealing with the litigant and their issues.

There are a number of websites set up on the internet which seem to promote vexatious litigation and offer tips on how to do this, sometimes in great detail. Eliminating these websites may help limit vexatious litigation, however this may not be a practical suggestion.

Consideration of applications "on the papers" would seem to be appropriate for vexatious litigants' issues. In this way the substance of any applications could be assessed on its merit before being processed in a court.

The concept of a known vexatious litigant having to provide security before entering a court process has some merit as currently vexatious litigants endeavour to use free or low cost legal options to pursue their ends. It is suspected that this is where most vexatious litigants can be found.

In accordance with much of this submission it is suggested that the bulk of vexatious litigants never enter the court system but operate just outside it and probably cause more concern for agencies and individuals using free or cheaper legal alternatives.

Balancing rights and interests

Based on the information provided in the questions and issues paper that only 14 individuals have been declared vexatious litigants in the last 80 years the balancing of rights would seem to be firmly in the favour of vexatious litigants as it is expected that many more than that have actually existed.

Council would argue that the balance needs to be shifted more in favour of organizations and individuals that are affected by the detrimental activities of vexatious litigants.

Other ways to respond to vexatious litigants

Council thinks that it is important for the Justice system to send a strong message to would be and actual vexatious litigants that their activities will not be tolerated in society. For individuals and organisations there needs to be clear, simple, accessible, cheap and effective processes.

The concept of referring vexatious litigants to support services is a good one as it is our view that some of these litigants do have other problems, especially mental health issues.

Whilst dealing with litigants with mental health issues is challenging, the system needs to have the power to make definite and binding determinations over vexatious litigants that are enforceable by other organizations and individuals. This will be a key issue in preventing the waste of resources currently employed in dealing with these cases.
The impact of vexatious litigation in other federal, state and territory courts

The ability of the Victorian Justice system to recognise declarations of vexatious litigants from interstate and federal jurisdictions and, as such, a universal national system is supported. Further, individuals and organizations should be able to recognise these declarations too without having to become involved in court processes.

As indicated earlier, due to new technology, especially the internet, there are no jurisdictional boundaries applying to litigants and the way they apply the technology, i.e. it is just as easy for a vexatious litigant to bombard an individual or an organization with unwanted emails from Marble Bar as it is from Melbourne – or Minneapolis for that matter.