

Queensland



# VEXATIOUS LITIGANTS ACT 1981

**Reprinted as in force on 16 August 2002  
(includes amendments up to Act No. 34 of 2002)**

**Reprint No. 1B**

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# Information about this reprint

This Act is reprinted as at 16 August 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

**Replacement reprint date** If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.

# Queensland



## VEXATIOUS LITIGANTS ACT 1981

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# VEXATIOUS LITIGANTS ACT 1981

[as amended by all amendments that commenced on or before 16 August 2002]

## **An Act to provide for the declaration of persons as vexatious litigants and for related purposes**

### **1 Short title**

This Act may be cited as the *Vexatious Litigants Act 1981*.

### **2 Meaning of terms**

(1) In this Act—

**“legal proceedings”** means any cause, matter, action, suit, or proceeding of any 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.

**“person declared to be a vexatious litigant”** includes a person in respect of whom there is in force an order of a description first specified in section 7.

**“register”** means the register of orders kept in the registry of the Supreme Court at Brisbane pursuant to section 6.

(2) For this Act—

- (a) an appeal, challenge, review or calling into question in any way of a decision made under section 9A(6) is taken to be legal proceedings; and
- (b) the following applications are taken not to be legal proceedings—
  - (i) an application for variation mentioned in section 3(3);
  - (ii) an application for revocation mentioned in section 4;
  - (iii) an application for leave mentioned in section 8 or 9.

### **3 Declaration of vexatious litigants upon application by public officials**

(1) If the Supreme Court or a Judge thereof is satisfied that a person has frequently and without reasonable ground instituted vexatious legal proceedings or procured vexatious subpoena, summonses to a witness, warrants or process to be issued or that any other person acting in concert with such a person has without reasonable ground instituted vexatious legal proceedings or procured vexatious subpoena, summonses to a witness, warrants or process to be issued, the Supreme Court or such Judge may after hearing such person and, if the case require it, such other person, or giving him, her or them an opportunity of being heard, by its, his or her order, declare such person and such other person to be a vexatious litigant.

(2) An order under this section shall be made only upon the application of the Attorney-General, the Solicitor-General, the Crown Solicitor or the registrar of the Supreme Court at Brisbane, Rockhampton, Townsville or Cairns in the State.

(3) The Supreme Court or a Judge thereof may make an order under subsection (1) so as to contain such conditions or qualifications or to have such limited application as appear to it, him or her to be appropriate and may upon the application of an official specified in subsection (2) or of the person declared to be a vexatious litigant vary an order so made by varying or rescinding the conditions or qualifications or limits to which such an order is for the time being subject.

(4) Where an order by which any person is declared to be a vexatious litigant contains any condition or qualification that continues to have effect or has limited application the provisions of this Act shall apply in relation to that person subject to the order.

### **4 Revocation of s 3 order**

(1) If the Supreme Court or a Judge thereof is satisfied that a person declared to be a vexatious litigant—

- (a) does not intend to pursue or to procure another person to pursue the course of conduct that occasioned the person being declared a vexatious litigant; and
- (b) does not intend to pursue or to procure another person to pursue a course of conduct that might occasion an order being made under section 3 in relation to the person or any other person;

the Supreme Court or such Judge may, by its, his or her order, revoke the order by which that person was declared to be a vexatious litigant.

(2) An order under this section shall be made only upon an application made by or on behalf of the person declared to be a vexatious litigant.

## **5 Reinstatement of declaration of vexatious litigant**

(1) Where a person whose declaration as a vexatious litigant has been revoked pursuant to section 4 institutes or takes, within a period of 5 years following such revocation, legal proceedings that are stayed, dismissed or struck out, or, being the issue of a subpoena, summons to a witness, warrant or other process, are set aside as being vexatious, oppressive, frivolous, or an abuse of the procedures of the court or tribunal in which they are instituted or taken, the Supreme Court or a Judge thereof shall by its, his or her order annul the order by which the declaration as a vexatious litigant was revoked and reinstate such declaration.

(2) An order under this section shall be made only upon the application of an official specified in section 3(2).

(3) Where an order made under section 3 was so made as to have limited application and it is sought, by application to the Court or a Judge, to reinstate the declaration as a vexatious litigant of the person in respect of whom the order was made, the Court or Judge, in reinstating the declaration, may, by its, his or her order—

- (a) remove all limitations on the application of the order; and
- (b) vary the limitations on the application of the order; and
- (c) impose fresh limitations on the application of the order;

as it, he or she thinks fit.

## **6 Notification of orders**

(1) Where an order is made under section 3, 4 or 5 the registrar of the Supreme Court at the place where the order is made shall cause notification of the making of the order and its terms to be published in the Gazette and a register of such orders shall be kept in the registry of the Supreme Court at Brisbane.

(1A) Such notification shall be taken as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(2) A certificate purporting to be under the hand of the registrar of the Supreme Court at Brisbane as to the state of the register in any particular at a date specified in the certificate shall be accepted as evidence of the matters contained therein.

## **7 Court orders deemed to be declarations under Act**

(1) An order made before the passing of this Act under any practice rule of the Supreme Court or the District Courts to the effect that no legal proceedings shall be instituted in the Supreme Court or, as the case may be, a District Court by any person to whom the order relates without the leave of such court or a Judge thereof shall be deemed to be an order made under this Act that declares such person to be a vexatious litigant and the provisions of this Act shall apply in relation to that order and such person accordingly.

(2) Notification of the making of such an order need not be published in the Gazette but the order shall be recorded in the register.

## **8 Proceedings by or with vexatious litigants require leave**

(1) Neither a person declared to be a vexatious litigant nor any person acting in concert with the person shall institute or take any legal proceedings without leave of the Supreme Court or a Judge thereof first had and obtained.

(1A) Proceedings instituted or taken in contravention of subsection (1) shall be invalid and of no force or effect in law.

(2) Where before the passing of this Act any legal proceedings has been instituted or taken by a person declared to be a vexatious litigant or by any person acting in concert with the person such legal proceedings shall not be continued without leave of the Supreme Court or a Judge thereof first had and obtained.

(2A) However, subsection (2) does not apply in relation to proceedings duly instituted or taken with the leave of the court in which they were instituted or taken or of a Judge thereof.

(3) Where an order that declares a person to be a vexatious litigant, or an order made before the passing of this Act that, pursuant to this Act, is deemed to be such an order, is made or has been made after the instituting or taking of legal proceedings by such person or by another person acting in concert with the person, such legal proceedings shall not be continued



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without leave of the Supreme Court or a Judge thereof first had and obtained.

(4) Subsection (4A) applies if a person who is declared to be a vexatious litigant does not start a legal proceeding before the end of the limitation period for the proceeding only because the person has not obtained leave, under this Act, to start the proceeding.

(4A) The limitation period for the proceeding is taken—

- (a) not to have ended if the person, within the limitation period for the proceeding, applied to the Supreme Court or a Supreme Court judge for leave to start the proceeding; and
- (b) if leave is granted—to end 14 days after the day on which the leave is granted.

(5) Subsection (1) does not apply so as to prohibit or impede any step to be taken by a person declared to be a vexatious litigant in legal proceedings instituted against the person, other than—

- (a) a step referred to in section 9; or
- (b) the institution of third party proceedings.

(6) In this section—

**“limitation period”** means the time limited by any law or practice for instituting or taking the proceeding.

## **9 Process by or for vexatious litigants requires leave**

(1) Neither a person declared to be a vexatious litigant nor any person acting in concert with the person shall procure the issue of any subpoena, summons to a witness, warrant or process for the purposes of any legal proceedings instituted or taken, whether before or after the passing of this Act, by or against the person or by another person acting in concert with the person without leave of—

- (a) the Supreme Court or a Judge thereof in the case of proceedings in that Court; or
- (b) a District Court judge in the case of proceedings in a District Court; or
- (c) a Stipendiary Magistrate in the case of proceedings in a Magistrates Court or before justices; or

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- (d) in the case of proceedings before a tribunal—the person constituting the tribunal or, if there be more than 1 person constituting the tribunal, the chairperson thereof.

(2) A subpoena, summons, warrant or process, being one to which subsection (1) relates, issued without the leave prescribed by that subsection in respect thereof duly had and obtained shall be invalid and of no force or effect in law.

(3) A subpoena, summons to a witness, warrant or process procured to be issued before the passing of this Act by a person declared to be a vexatious litigant or by any person acting in concert with the person (other than a warrant or process to enforce a judgment obtained by him or her) shall be invalid and of no force or effect in law.

## **9A Application for leave**

(1) An application for leave mentioned in section 8 or 9 must be made by the applicant filing the following documents relating to the proceedings or step in the proceedings in the relevant court or tribunal—

- (a) an originating application;
- (b) an affidavit of relevant evidence;
- (c) submissions on which the applicant intends to rely;
- (d) if the application is for leave to institute or take legal proceedings—a draft of the proposed documents to be used to institute or take the legal proceedings;
- (e) if the application is for leave to procure the issue of any subpoena, summons to a witness, warrant or process for any legal proceedings—a draft of the proposed subpoena, summons to a witness, warrant or process.

(2) The applicant must—

- (a) give a service copy of each filed document and the notice mentioned in subsection (4) to each other party within 7 days of the filing; and
- (b) file an affidavit about service of the documents within 10 days of the filing.

(3) Subsection (2) does not apply to an application for leave in relation to proceedings instituted against the applicant.

(4) The notice must state that the person to whom it is given may, within 45 days after the notice is given (the “**response period**”), file a written response to the application in the relevant court or tribunal.

(5) If the person wishes to respond to the application, the person must file an affidavit in response in the relevant court or tribunal before the response period ends.

(6) The court, judge or other person to whom the application is made must, in the parties’ absence, decide the application—

- (a) if the application is for leave in relation to proceedings instituted against the applicant—as soon as possible, by reference to the documents mentioned in subsection (1); or
- (b) otherwise—after the last response period ends, by reference to the documents mentioned in subsection (1) and the written responses, if any, received under this section.

(7) If leave is refused, the registrar of the relevant court or tribunal must refuse to accept a further originating application under this section dealing with the same, or substantially the same, issue.

(8) An application for leave may not be made in relation to a decision made under subsection (6).

(9) In this section—

“**proceedings**” means the proceedings or proposed proceedings in relation to which the leave is sought.

“**relevant court or tribunal**” means—

- (a) for an application under section 8—the Supreme Court; or
- (b) for an application under section 9—the court or tribunal in which the step in the proceedings is to be taken.

## **10 Conditions for applications for leave**

(1) A Judge, Magistrate or other person before whom there comes an application for leave referred to in section 8 or 9 may order—

- (a) that the applicant lodge security for costs of the application or deposit a sum in an amount specified by such Judge, Magistrate or other person; and
- (b) that the application not proceed until such security has been lodged or such sum has been deposited.

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(2) Before an application for leave mentioned in section 8 or 9 proceeds, the applicant must have complied with an order, if any, made under subsection (1).

(4) Upon the determination of an application for leave referred to in section 8 or 9 an order for costs in an amount fixed by the Judge, Magistrate or other person who decides the application may be made in favour of each person who has successfully resisted the grant of leave upon the application.

(4A) In no case shall an order for costs be made in favour of the applicant for such leave.

(5) Where an order for costs is made under subsection (4) by any person, not being a court or Judge thereof, and any part thereof remains unsatisfied (from the security or sum for costs lodged or deposited by the applicant or otherwise) a copy of such order may be filed in a court having jurisdiction in debt in the outstanding amount and may be enforced as an order for costs made by that court.

(6) Security to be lodged pursuant to this section shall—

- (a) in the case of an application made in the Supreme Court—be lodged with the registrar of that Court at the place where the application is made;
- (b) in the case of an application made in the District Court—be lodged with the registrar of that Court at the place where the application is made;
- (c) in the case of an application made to a Stipendiary Magistrate—be such as is approved by the Stipendiary Magistrate and be lodged with the person who is or acts as registrar of the Magistrates Court and clerk of the court at the place where the application is made;
- (d) in the case of an application made to any person as a member or the chairperson of a tribunal—be such as is approved by the person and be lodged with the person having custody of the records of the tribunal.

(7) Any sum to be deposited pursuant to this section shall be deposited with the person with whom security would be lodged pursuant to this section had such security been required to be lodged.

(8) Any part of the security lodged or sum deposited pursuant to an order under subsection (1) that remains after satisfying an order for costs made

under subsection (4) shall be retained by the officer of the court or tribunal with whom it was lodged or deposited and applied in satisfaction of any order for costs made in the legal proceedings in respect or for the purposes of which the application was made.

(9) Where the security has been lodged or the sum deposited with a registrar of the Supreme Court in connection with an application made under section 8 for the purpose of instituting or taking legal proceedings in any other court or tribunal, the part of the security or sum to be retained pursuant to subsection (8) shall be transmitted by the registrar to the officer of that other court or tribunal specified by subsection (6) as the officer with whom a security is to be lodged in connection with an application made to that other court or tribunal and that officer shall retain and apply the part so transmitted in accordance with subsection (8).

## **11 Conditions for granting leave**

(1) A court, Judge or Magistrate or other person (“**judicial officer**”) of whom is sought leave referred to in section 8 or 9 shall not grant such leave unless it, he or she is satisfied—

- (a) in the case of an application for leave to institute or take legal proceedings—that instituting or taking those proceedings is not an abuse of process and that there is prima facie ground therefor;
- (b) in the case of an application for leave to issue any subpoena, summons, warrant or process—that there is sufficient reason for the issue thereof and that no abuse of process is intended or is likely to result from the issue thereof.

(2) Without limiting the orders a judicial officer may make, the judicial officer may, as a condition of granting leave—

- (a) order the applicant to lodge security for costs for the proceedings or deposit an amount stated by the judicial officer with the registrar or other responsible person as security; and
- (b) order the proceedings not proceed until the security has been lodged or the amount deposited.

## **12 Application of ss 8 and 9 affected by order of Judge etc.**

(1) Upon the determination of an application for leave referred to in section 8 or 9 the Judge, Magistrate or other person who has decided the

application, if he or she is satisfied that an abuse of process is not likely to result and if the applicant requests it, may order—

- (a) that the deposit of security for costs in connection with any further application for such leave to be made by the applicant in the legal proceedings in relation to which the application determined by him or her was made be dispensed with or be in such reduced sum as he or she specifies in his or her order; or
- (b) that the making of all or any further applications for such leave by the applicant, with a view to the applicant's taking, performing and procuring all further steps, acts and things necessary or desirable to effectually conduct the legal proceedings in relation to which the application determined by him or her was made or to enforce any judgment given or order made therein or such steps, acts and things of that description as he or she specifies in the order, be dispensed with.

(2) An order made under subsection (1) may be revoked at any time by a Judge, Magistrate or other person possessing a like jurisdiction to that of the Judge, Magistrate or other person who made the order, upon the application of any person aggrieved by anything done under the authority of the order or of any official referred to in section 3(2), if such Judge, Magistrate or other person believes that an abuse of process has resulted from the making of the order or is likely to result if the order is allowed to stand.

(3) For as long as an order made under subsection (1) subsists the provisions of section 8 or 9 shall apply in relation to the person to whom and the legal proceedings to which the order relates subject to the order.

### **13 Mode of service of documents by or on behalf of vexatious litigant or person acting in concert**

(1) Service on any person of a document relating to legal proceedings instituted or taken by or against a person declared to be a vexatious litigant or by or against a person acting in concert with the person (being in either case a document to be served by or on behalf of the vexatious litigant or person acting in concert with the person) shall be deemed to be not sufficient service and ineffective unless—

- (a) it is effected in accordance with law by a solicitor, an employee of a solicitor, or a duly appointed bailiff; or

- (b) it is effected in accordance with law, other than by a person referred to in paragraph (a), on land or premises in the possession of another as a residence or place of business, with the consent of that other first had and obtained; or
- (c) it is effected on the person served at a place other than land or premises in the possession of another as a residence or place of business; or
- (d) it is effected by leaving the document with some person authorised by the person to be served to accept service thereof on his or her behalf; or
- (e) it is effected by sending the document by A.R. certified mail addressed to the person to be served at the person's usual place of residence or business.

(2) A document purporting to be a receipt for mail addressed to the person to be served in accordance with subsection (1)(e) shall be evidence and, in the absence of evidence to the contrary conclusive evidence that the document to be served was received by that person on the date indicated on the receipt as the date of receipt.

#### **14 Entry by vexatious litigant or person acting in concert an unlawful trespass**

(1) If a person declared to be a vexatious litigant or a person acting in concert with the person enters upon land or premises in the possession of another as his or her residence or place of business with a view to effecting service, otherwise than in accordance with section 13, on any person of a document relating to legal proceedings instituted or taken by or against the vexatious litigant or person acting in concert with the person, the person shall thereby commit an unlawful trespass on such land or premises and, for as long as the person remains therein, shall be taken to be therein without lawful excuse.

(2) A person shall be taken to be in possession of land or premises for the purposes of subsection (1) if the person uses that land or those premises for his or her residing therein or for carrying on any business therein notwithstanding that—

- (a) the person has no estate or interest therein; or
- (b) the person's use thereof is by arrangement with another; or
- (c) control of the use thereof does not lie in the person.

**15 Documents in contravention of Act not required to be accepted**

(1) Where a person declared to be a vexatious litigant or any person acting in concert with the person—

- (a) seeks of an officer of any court or tribunal to have an originating proceeding issued on the person's behalf by that court or tribunal; or
- (b) presents to an officer of any court or tribunal an originating proceeding made by the person, or a summons to a witness issued on the person's behalf, for lodgment in that court or tribunal;

and it appears to such officer that such originating proceeding or summons would be or is in contravention of this Act such officer shall not be required to issue the originating proceeding or to accept the document in question for lodgment in the court or tribunal and the officer may reject the same.

(2) Notwithstanding the provisions of any other Act, it is not the duty of any police officer to execute or accept a warrant of apprehension that has been issued on an originating proceeding that without the prescribed leave would be invalid and of no force or effect in law, unless the justice who has issued the warrant acknowledges on the warrant that the prescribed leave has been obtained.

**16 Issue of bench warrants**

A person charged with the duty of issuing a warrant to apprehend any person pursuant to an order made by a court or justices upon the application of a person, other than an application made through a barrister or a solicitor, or a member of the public service or a police officer in either case acting in the course of his or her duty, shall not issue such a warrant until he or she satisfies himself or herself that the person on whose application the order was made is not named in the register as a person declared to be a vexatious litigant.

**17 Setting aside process ex parte**

(1) A person who has reason to believe that any originating process, subpoena, summons to a witness, warrant or other process served upon the person has been issued or procured by a person declared to be a vexatious litigant or by any other person acting in concert with the person may make application ex parte to the court or tribunal in which or to invoke the



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jurisdiction of which the document in question was issued, for a declaration setting aside the process, subpoena, summons or, as the case may be, warrant.

(2) A court or tribunal to which an application is duly made under this section is invested with jurisdiction to hear and determine the application, to make all orders therein that are necessary or desirable to effect that purpose and to set aside the process, subpoena, summons or warrant to which the application relates and to make such order for costs as it thinks fit.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 16 August 2002. Future amendments of the Vexatious Litigants Act 1981 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	6 September 1994
1A	to Act No. 9 of 1997	4 July 1997

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Vexatious Litigants Act 1981 No. 35**

date of assent 20 May 1981  
commenced on date of assent  
amending legislation—

### **Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(5) pt 26**

date of assent 15 May 1997  
ss 1–2 commenced on date of assent  
remaining provisions commenced 20 June 1997 (1997 SL No. 155)

### **Justice and Other Legislation (Miscellaneous Provisions) Act 2002 No. 34 ss 1, 74 sch 6**

date of assent 16 August 2002  
commenced on date of assent

## 7 List of annotations

### **Meaning of terms**

s 2 amd 1997 No. 9 s 95

### **Declaration of vexatious litigants upon application by public officials**

s 3 amd 2002 No. 34 s 74 sch 6

**Proceedings by or with vexatious litigants require leave****s 8** amd 1997 No. 9 s 96**Process by or for vexatious litigants requires leave****s 9** amd 2002 No. 34 s 74 sch 6**Application for leave****s 9A** ins 1997 No. 9 s 97**Conditions for applications for leave****prov hdg** amd 1997 No. 9 s 98(1)**s 10** amd 1997 No. 9 s 98(2)–(4); 2002 No. 34 s 74 sch 6**Conditions for granting leave****s 11** amd 1997 No. 9 s 99**Application of ss 8 and 9 affected by order of Judge etc.****s 12** amd 1997 No. 9 s 100