



ANNO TRICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 35 of 1981

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

[ASSENTED TO 20TH MAY, 1981]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

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

2. Meaning of terms. (1) In this Act, save where a contrary intention appears—

“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 connexion 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 the purposes of this Act an application for variation referred to in section 3 (3), an application for revocation referred to in section 4, an application for leave referred to in section 8 or 9 and an appeal against any decision of a registrar, magistrate or chairman of a tribunal in respect of security ordered under section 10 (1) to be lodged by an applicant shall be deemed not to be legal proceedings.

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 subpoenae, 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 subpoenae, 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 or them an opportunity of being heard, by its or his 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 or Townsville in the State of Queensland.

(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 or him 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 his 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 him or any other person, the Supreme Court or such Judge may, by its or his 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. Re-instatement 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 or his order annul the order by which the declaration as a vexatious litigant was revoked and re-instate 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 re-instate the declaration as a vexatious litigant of the person in respect of whom the order was made, the Court or Judge, in re-instating the declaration, may, by its or his order—

(a) remove all limitations on the application of the order;

(b) vary the limitations on the application of the order; and

(c) impose fresh limitations on the application of the order, as it or he 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.

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. 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.

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 him shall institute or take any legal proceedings without leave of the Supreme Court or a Judge thereof first had and obtained.

Proceedings instituted or taken in contravention of this subsection 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 him such legal proceedings shall not be continued without leave of the Supreme Court or a Judge thereof first had and obtained:

Provided that this subsection 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 him, such legal proceedings shall not be continued without leave of the Supreme Court or a Judge thereof first had and obtained.

(4) Where a person declared to be a vexatious litigant has failed to institute or take any legal proceedings before the expiration of the time limited by any law or rule of practice for instituting or taking the legal proceedings by reason only of the fact that, being required by this Act to obtain leave before instituting or taking the legal proceedings, he has not obtained such leave, such time shall be deemed not to have expired if—

(a) he has within the time so limited duly made application to the Supreme Court or a Judge thereof for such leave; and

(b) he has diligently prosecuted the application, and such time shall be deemed not to expire until 14 days after the date on which such leave is granted or refused or 14 days after all appeals that have been duly instituted in connexion with the grant or refusal of such leave have been finally determined, whichever time is the later.

(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 him, other than—

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

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 him 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 him or by another person acting in concert with him without leave of—

- (i) the Supreme Court or a Judge thereof in the case of proceedings in that court; or
- (ii) a Judge of District Courts in the case of proceedings in a District Court; or
- (iii) a Stipendiary Magistrate in the case of proceedings in a Magistrates Court or before justices; or
- (iv) in the case of proceedings before a tribunal, the person constituting the tribunal or, if there be more than one person constituting the tribunal, the chairman 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 him (other than a warrant or process to enforce a judgment obtained by him) shall be invalid and of no force or effect in law.

10. Conditions for hearing applications for leave. (1) A judge, magistrate or other person before whom there comes for hearing 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.

(2) An application for leave referred to in section 8 or 9 shall not proceed unless the applicant—

- (a) has complied with an order (if any) made under subsection (1); and
- (b) has satisfied the court, judge, magistrate or other person who is to hear the matter of his application that seven clear days' notice of the place and time of the hearing of the application has been given to the person or persons likely to be affected if leave therein were granted.

(3) A person likely to be affected if leave were granted upon an application for leave referred to in section 8 or 9, if he appears in person or by his counsel or solicitor at the hearing of the matter of the application, shall be entitled to be heard upon that matter.

(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 hears the matter of the application may be made in favour of each person who has successfully resisted the grant of leave upon the application.

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 a 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 him 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 chairman of a tribunal, be such as is approved by him 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.

Where the security has been lodged or the sum deposited with a registrar of the Supreme Court in connexion 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 the preceding paragraph shall be transmitted by him 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 connexion with an application made to that other court or tribunal and that officer shall retain and apply the part so transmitted in accordance with the preceding paragraph.

11. Conditions for granting leave. A court, judge or magistrate or other person of whom is sought leave referred to in section 8 or 9 shall not grant such leave unless it or he 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.

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 heard the matter of the application, if he 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 connexion 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 was made be dispensed with or be in such reduced sum as he specifies in his 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 was made or to enforce any judgment given or order made therein or such steps, acts and things of that description as he 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 him (being in either case a document to be served by or on behalf of the vexatious litigant or person acting in concert with him) 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;
- (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;
- (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;
- (d) it is effected by leaving the document with some person authorized by the person to be served to accept service thereof on his behalf; or
- (e) it is effected by sending the document by A.R. certified mail addressed to the person to be served at his 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 paragraph (e) of subsection (1) 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 him enters upon land or premises in the possession of another as his 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 him, he shall thereby commit an unlawful trespass on such land or premises and, for as long as he 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 he uses that land or those premises for his residing therein or for his carrying on any business therein notwithstanding that—

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

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 him—

- (a) seeks of an officer of any court or tribunal to have an originating proceeding issued on his behalf by that court or tribunal; or
- (b) presents to an officer of any court or tribunal an originating proceeding made by him, or a summons to a witness issued on his 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 he may reject the same.

(2) Notwithstanding the provisions of any other Act, it is not the duty of any member of the Police Force 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 the Police Force in either case acting in the course of his duty, shall not issue such a warrant until he satisfies himself 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. A person who has reason to believe that any originating process, subpoena, summons to a witness, warrant or other process served upon him has been issued or procured by a person declared to be a vexatious litigant or by any other person acting in concert with him may make application *ex parte* to the court or tribunal in which or to invoke the 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.

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.