



Queensland

# **Vexatious Proceedings Act 2005**

**Act No. 44 of 2005**





Queensland

# Vexatious Proceedings Act 2005

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## **Vexatious Proceedings Act 2005**

### **Act No. 44 of 2005**

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**An Act to restrict vexatious proceedings**

**[Assented to 14 October 2005]**

**The Parliament of Queensland enacts—****Part 1 Introduction****1 Short title**

This Act may be cited as the *Vexatious Proceedings Act 2005*.

**2 Commencement**

This Act commences on a day to be fixed by proclamation.

**3 Definitions**

The dictionary in the schedule defines particular words used in this Act.

**4 Inherent jurisdiction and powers not affected**

This Act does not affect any inherent jurisdiction of a court or tribunal or any powers a court or tribunal has other than under this Act to restrict vexatious proceedings.

**Part 2 Vexatious proceedings orders****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
  - (b) 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.

## **7 Order may be varied or set aside**

- (1) The Court may, by order, vary or set aside a vexatious proceedings order.
- (2) The Court may make the order on its own initiative or on the application of—
  - (a) the person subject to the vexatious proceedings order; or
  - (b) a person mentioned in section 5(1).

## **8 Order may be reinstated**

- (1) This section applies if—
  - (a) the Court sets aside a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in Queensland; and
  - (b) the Court is satisfied that, within 5 years of the vexatious proceedings order being set aside—
    - (i) the person has instituted or conducted a vexatious proceeding in an Australian court or tribunal; or
    - (ii) the person has acted in concert with another person who has instituted or conducted a vexatious proceeding in an Australian court or tribunal.
- (2) The Court may—
  - (a) by order, reinstate the vexatious proceedings order; and
  - (b) make any other order the Court considers appropriate in relation to the person, including, for example, an order varying the vexatious proceedings order.



- (3) The Court may make an order under subsection (2) on its own initiative or on the application of a person mentioned in section 5(1).
- (4) The Court must not reinstate a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

## **9 Notification and register of orders**

- (1) This section applies in relation to—
  - (a) a vexatious proceedings order; or
  - (b) an order varying or setting aside a vexatious proceedings order; or
  - (c) an order reinstating a vexatious proceedings order; or
  - (d) an order made under section 8(2)(b).
- (2) The registrar of the Court must arrange for a copy of the order to be—
  - (a) published in the gazette within 14 days after the order is made; and
  - (b) entered in a publicly available register kept for the purposes of this Act in the registry of the Court at Brisbane within 7 days after the order is made.
- (3) The registrar of the Court may also arrange for details of the order to be published in another way.

*Example—*

publication on the Court's website

**Part 3****Particular consequences of vexatious proceedings orders****10 Vexatious proceedings order prohibiting institution of proceedings**

- (1) If the Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in Queensland—
  - (a) the person may not institute proceedings, or proceedings of the particular type, in Queensland without the leave of the Court under section 13; and
  - (b) another person may not, acting in concert with the person, institute proceedings, or proceedings of the particular type, in Queensland without the leave of the Court under section 13.
- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is permanently stayed.
- (3) Without limiting subsection (2), the Court, or the court or tribunal in which the proceeding is instituted, may make—
  - (a) an order declaring that a proceeding is a proceeding to which subsection (2) applies; and
  - (b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.
- (4) The Court, or the court or tribunal in which the proceeding is instituted, may make an order under subsection (3) on its own initiative or on the application of a person mentioned in section 5(1).

**11 Application for leave to institute a proceeding**

- (1) This section applies to a person (*the applicant*) who is—
  - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland; or
  - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).

- (2) The applicant may apply to the Court for leave to institute a proceeding that is subject to the order.
- (3) The applicant must file an affidavit with the application that—
  - (a) lists all occasions on which the applicant has applied for leave under—
    - (i) this section; or
    - (ii) before the commencement of this section, the *Vexatious Litigants Act 1981*, section 8 or 9;<sup>1</sup> and
  - (b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section; and
  - (c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on any person unless—
  - (a) an order is made under section 13(1)(a); and
  - (b) the copy is served in accordance with the order.
- (5) The Court may dispose of the application by—
  - (a) dismissing the application under section 12; or
  - (b) granting the application under section 13.
- (6) The applicant may not appeal from a decision disposing of the application.

## **12 Dismissing application for leave**

- (1) The Court must dismiss an application made under section 11 for leave to institute a proceeding if it considers—
  - (a) the affidavit does not substantially comply with section 11(3); or
  - (b) the proceeding is a vexatious proceeding.

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<sup>1</sup> *Vexatious Litigants Act 1981*, section 8 (Proceedings by or with vexatious litigants require leave) or 9 (Process by or for vexatious litigants requires leave)

- (2) The application may be dismissed even if the applicant does not appear at the hearing of the application.

### 13 Granting application for leave

- (1) Before the Court grants an application made under section 11 for leave to institute a proceeding, it must—
- (a) order that the applicant serve each relevant person with a copy of the application and affidavit and a notice that the person is entitled to appear and be heard on the application; and
  - (b) give the applicant and each relevant person, on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The Court may grant leave to institute a particular proceeding or a proceeding of a particular type (the *proceeding*), subject to the conditions the Court considers appropriate.
- (4) However, the Court may grant leave only if it is satisfied that the proceeding is not a vexatious proceeding.
- (5) In this section—
- relevant person*, in relation to the applicant for leave to institute the proceeding, means each of the following persons—
- (a) the person against whom the applicant proposes to institute the proceeding;
  - (b) the Attorney-General;
  - (c) the Crown solicitor;
  - (d) the registrar of the Court if the registrar applied for a vexatious proceedings order in relation to the applicant;
  - (e) any person mentioned in section 5(1)(d) or (e)—

- (i) who, with the leave of the Court, applied for a vexatious proceedings order in relation to the applicant; and
- (ii) who the Court considers should be served;
- (f) any person—
  - (i) who made an application in relation to the applicant under the *Vexatious Litigants Act 1981*, section 3(2) or 5(2)<sup>2</sup> before the commencement of this section; and
  - (ii) who the Court considers should be served.

## Part 4 Transitional provisions for repealed Vexatious Litigants Act 1981

### 14 Definitions for pt 4

In this part—

*commencement* means the commencement of this section.

*repealed Act* means the *Vexatious Litigants Act 1981*.

### 15 Repealed Act continues to apply to applications made before commencement

- (1) This section applies if—
  - (a) an application has been made under the repealed Act; and
  - (b) immediately before the commencement, the application has not been decided.

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<sup>2</sup> *Vexatious Litigants Act 1981*, section 3 (Declaration of vexatious litigants upon application by public officials) or 5 (Reinstatement of declaration of vexatious litigant)

- (2) The repealed Act continues to apply in relation to deciding the application as if the *Vexatious Proceedings Act 2005* had not been enacted.

## **16 Orders under repealed Act taken to be orders under this Act**

- (1) An order under section 3 of the repealed Act<sup>3</sup> that is in force immediately before the commencement is taken to be a vexatious proceedings order for the purposes of this Act.
- (2) An order under section 3 of the repealed Act that is made or reinstated<sup>4</sup> on or after the commencement because of section 15 is taken to be a vexatious proceedings order for the purposes of this Act.
- (3) If—
- (a) an order under section 4 of the repealed Act<sup>5</sup> that revokes another order is in force immediately before the commencement; or
  - (b) an order under section 4 of the repealed Act that revokes another order is made on or after the commencement because of section 15;
- then—
- (c) for the purposes of this Act, the other order is taken to be a vexatious proceedings order that has been set aside; and
  - (d) section 8 applies in relation to the other order.

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3 *Vexatious Litigants Act 1981*, section 3 (Declaration of vexatious litigants upon application by public officials)

4 See the *Vexatious Litigants Act 1981*, section 5 (Reinstatement of declaration of vexatious litigant).

5 *Vexatious Litigants Act 1981*, section 4 (Revocation of s 3 order)

**Part 5****Repeal****17 Repeal of Vexatious Litigants Act 1981**

The Vexatious Litigants Act 1981 No. 35 is repealed.

## Schedule                      Dictionary

### section 3

***Australian court or tribunal*** means a court or tribunal of the Commonwealth or of a State.

***Court*** means the Supreme Court.

***Court's website*** means the website administered by the Supreme Court Library for the Court and other courts.<sup>6</sup>

***decision*** includes determination.

***institute***, in relation to proceedings, includes—

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

***order*** includes declaration and injunction.

***proceeding*** includes—

- (a) any cause, matter, action, suit, proceeding, trial, complaint or inquiry of any kind within the jurisdiction of any court or tribunal; and

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<sup>6</sup> The website may be viewed at <<http://www.courts.qld.gov.au>>.



**Schedule (continued)**

- (b) any proceeding, including any interlocutory proceeding, taken in connection with or incidental to a proceeding pending before a court or tribunal; and
- (c) any calling into question of a decision, whether or not a final decision, of a court or tribunal, and whether by appeal, challenge, review or in another way.

***proceedings of a particular type*** includes—

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person; and
- (c) proceedings in a particular court or tribunal.

***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).