

Vexatious Proceedings Bill 2005

Explanatory Notes

General Outline

Objectives of the Legislation

A vexatious litigant is a person who demonstrates particular behaviours in the pursuance of legal actions through the courts. These behaviours include taking legal action without any reasonable grounds, a repetition of arguments which have already been rejected, disregard for the court's practices and rulings, and persistent attempts to abuse the court's processes. The consequences of pursuing such actions include wastage of public resources and the harassment and annoyance of defendants in litigation that lacks a reasonable basis.

The existing legislation in Queensland, the *Vexatious Litigants Act 1981*, sets out a process to enable the Supreme Court to prohibit or limit legal actions brought by a vexatious litigant and a person acting in concert with such a litigant. Before the Supreme Court can exercise its discretion to make such an order, the threshold test must be met. The threshold test refers to the legal actions and their nature of which the Court must be satisfied that a litigant has undertaken and the level of recurrence of those acts. In Queensland, such legal actions must be brought on a frequent basis to meet the required level of recurrence.

Under the existing legislation, the Supreme Court cannot take into account legal actions brought by, or orders made about vexatious litigants in other jurisdictions in Australia in determining whether the required level of recurrence has been met.

The proposed *Vexatious Proceedings Bill 2005* (the Bill) will:

- repeal the *Vexatious Litigants Act 1981*; and
- enact new provisions to prohibit or limit legal actions brought by vexatious litigants or persons acting in concert with vexatious litigants.

The major improvement upon the existing legislation is that orders made, and legal actions brought in courts and tribunals outside Queensland can be

taken into consideration by the Supreme Court in determining whether an appropriate order should be made.

The Bill will also:

- add certainty to the criteria to be used by the Supreme Court in its determinations; and
- clarify and improve the processes relating to applications to court and to legal actions brought in contravention of orders.

Reasons for the objectives and how they will be achieved

Through the forum of the Standing Committee of Attorneys-General (SCAG), Queensland initiated the concept of a nationally consistent approach to legislation to deter and curtail the activities of vexatious litigants. A working party of officers from all States and Territories and the Commonwealth considered options for legislative consistency, and for the recognition of orders made, and vexatious legal action brought, in other jurisdictions.

Accordingly, the *Model Vexatious Proceedings Bill 2004* (the Model Bill) was developed by the working party. The Model Bill takes into account issues raised during consultation within each jurisdiction and the Parliamentary Counsels' Committee. Each jurisdiction can now use the Model Bill as the basis for its own legislation to control vexatious litigants. Even though the legislation would not be uniform across Australia, the approach to vexatious litigants would be consistent and would discourage vexatious litigants from "forum shopping", curtail litigants acting in concert and enable similar consequences to flow from one jurisdiction to another.

The Bill implements the Model Bill as legislation in accordance with the policy position and drafting style in Queensland.

Administrative cost to Government of implementation

It is not expected that the implementation of the Bill will result in additional administrative cost to Government.

Consistency with Fundamental Legislative Principles

The right of a person to take legal action over a wrong is an essential common law right. Under the Bill, the Supreme Court can make a

vexatious proceedings order that prohibits or limits the right of a person to take or continue legal action.

The breaches of the fundamental legislative principles are considered to be justified to prevent a litigant, either of his or her own behalf or through the recruitment of another person to act on his or her behalf, from continuing on courses of action, that are groundless and without substance, through the courts. Such actions clog up the court system, waste public resources and force defendants to respond and incur expense.

The Bill provides for safeguards against any potential loss of rights.

Vexatious proceedings orders can only be made by the Supreme Court. The Court must be satisfied that that person has met the threshold test or is acting in concert with such a person. Accordingly, for a person to lose this common law right, it must be established that that person has pursued particular courses of action through the courts on a frequent basis or has acted in concert with such a person. These particular courses of action are defined in the Bill as including proceedings that that are an abuse of process of the courts, or are instituted or conducted in a way to harass or annoy, to cause delay or detriment or for another wrongful purpose or are pursued without reasonable ground.

The Bill also provides balance to this loss or limitation of a right to bring a legal action. The Supreme Court cannot make a vexatious proceedings order until the person in question has the opportunity to be heard. In addition, a person with a vexatious proceedings order against them has the opportunity to apply to court to vary or set aside the order.

The Bill ensures that a person, who is the subject of a vexatious proceedings order, can bring a legitimate legal action, for example, a personal injuries claim. Under the Bill, that person can apply to the Supreme Court for leave to proceed before commencing the action. The Supreme Court will allow such a legal action to proceed if it is not vexatious. A person acting in concert with or at the direction of a person who is the subject of a vexatious proceedings order, must also apply for leave to proceed.

The Bill also prevents a vexatious litigant, who is the subject of a vexatious proceedings order, from acting in concert with, or directing another person to bring legal proceedings that are the subject of the order against the vexatious litigant. Any such legal proceedings brought by such a person are similarly not valid. It is considered appropriate to deter a vexatious litigant from continuing his or her cause in the courts by the recruitment another person.

The Bill does not allow the applicant to appeal the decision of the Supreme Court in a leave to proceed application. The decision is made by the Supreme Court after consideration of all the relevant facts. It is considered appropriate to block off any avenue of appeal as vexatious litigants, by their nature, take action in any way possible to question a court's decision regardless of the merit of their position.

Consultation

Community

As the Bill does not impact upon any particular sector of the community, no community consultation on the Bill has taken place.

Government

A consultation draft of the Bill was circulated to key stakeholders of the Department of Justice and Attorney-General including the courts, the Crown Solicitor, the Bar Association of Queensland, and the Queensland Law Society. These stakeholders were also consulted during the development of the Model Bill. Key stakeholders support the Bill.

Notes on Provisions

Part 1 Introduction

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 provides for the dictionary in the schedule.

Clause 4 ensures that any inherent jurisdiction or other powers of a court or tribunal is not affected by the Act.

Part 2 Vexatious Proceedings Orders

Clause 5 sets out the persons and officeholders who can apply for a vexatious proceedings order.

Clause 6 sets out the circumstances in which the Supreme Court can make a vexatious proceedings order in relation to a vexatious litigant or a person acting in concert with such a litigant. The Supreme Court must be satisfied that a litigant has brought vexatious proceedings, as defined, on a frequent basis or that a person is acting in concert with such a litigant. All legal actions instituted or conducted in, and all orders made in Australia can be considered by the Supreme Court in its determinations. This includes actions instituted or conducted and orders made prior to the commencement of this clause.

This clause also sets out the orders that the Supreme Court can make. The Supreme Court can make an order on its own initiative or on the application of certain persons or officeholders. Before an order is made against a person, that person must be given the opportunity to be heard.

Clause 7 allows for a vexatious proceedings order to be varied or set by the Supreme Court. This can be at the initiative of the Supreme Court, or by application of the person subject to the order or a person who is entitled to apply for a vexatious proceedings order.

Clause 8 allows for a vexatious proceedings order that has been set aside to be reinstated by the Supreme Court. This can only be done within 5 years of the vexatious proceedings order being set aside, and the person has instituted a vexatious proceedings in any court or tribunal in Australia or is acting in concert with such a person. The person in question must be given the opportunity to be heard.

Clause 9 provides for the publication of orders. Any orders made under this Act are to be entered into a publicly available register and published in the gazette. The register can also publish the details of the order in any other way, for example, on the court's website.

Part 3 **Particular Consequences of Vexatious Proceedings Orders**

Clause 10 sets out the effect of a vexatious proceedings order being made against a person. The person subject to the order, or a person acting in concert with such a person, is not able to institute proceedings or proceedings of a particular type in accordance with the order without leave of the Supreme Court. Any proceedings instituted are permanently stayed. If there is any doubt, the Supreme Court or the court or tribunal, in which the proceedings are instituted, can declare that the proceeding is subject to this section and is therefore permanently stayed and can make any other appropriate order.

Clause 11 sets out the process for a person subject to a vexatious proceedings order or a person acting in concert with such a person can apply for leave of the Supreme Court to institute a proceeding that is prohibited by the order. The applicant must file an affidavit with the application. The content of the affidavit is detailed in this clause. The applicant cannot appeal a decision to dismiss the application and to not grant leave.

Clause 12 sets out the circumstances in which the Supreme Court can dismiss the application for leave. The Supreme Court must dismiss the application if the affidavit does not substantially comply with the application requirements or the proceedings are vexatious.

Clause 13 sets out the circumstances and process by which an application for leave can be granted by the Supreme Court. The applicant is to serve the proposed defendant or respondent, and the other listed persons. All such relevant persons have an opportunity to be heard at the hearing for the application for leave. The Supreme Court can grant leave only if satisfied that the proceedings are not vexatious.

Part 4 **Transitional Provisions for repealed Vexatious Litigants Act 1981**

Clause 14 sets out the definitions for this Part.

Clause 15 sets out the transitional provisions made for applications made under the *Vexatious Litigants Act 1981* and have not been decided at the commencement of the *Vexatious Proceedings Act 2005*.

Clause 16 sets out the transitional provisions for orders made under the *Vexatious Litigants Act 1981*.

Part 5 **Repeal**

Clause 17 repeals the *Vexatious Litigants Act 1981*.