

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

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Law Reform Committee

SUBMISSION OF DARRYL O'BRYAN  
TO THE VICTORIAN LAW REFORM COMMITTEE

Dear Committee

My public submission into your inquiry into vexatious litigants follows:

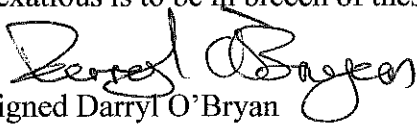
1. Having read your online issues paper I must point out under the heading, "TELL THE COMMITTEE WHAT YOU THINK", with reference to you only excepting contributions with respect to," investigating vexatious litigants in Victorian courts and tribunals," and not," inquiring into vexatious litigants in the High Court, the Federal Court, the Family Court or the Federal Magistrates Court, which are all federal courts." This on the face of it seems to the reader to presume that the Victorian courts are separate to those in federal jurisdiction, this is of course is in contradiction to Chapter III of the Commonwealth Constitution Act 1900. High Court precedence in recent history reminds us of this, example *Kable v D.P.P* (New South Wales) 12 September 1996 High Court of Australia 24(1996) 189 CLR 51, *Forge v Australian Securities and Investment Commission* 5 September 2006 High Court of Australia 44, *Gypsy Jokers Motor Cycle Club Incorporated v Police Commissioner* (2008) High Court of Australia 4 (7 February 2008).
2. There is a problem in Victoria's County Court Rules specifically 27.06 which allows a Registrar to refuse to file an originating motion due to it being an abuse of process, in effect calling it vexatious and frivolous. It is clearly an abuse of the administration of justice for a Registrar to perform a judgment on the contents of a Writ when his or her job is to ascertain that the document fulfills the Form layout not the content.
3. In my experience when an originating motion contains anything that exposes the State for it short falls it is very quickly labeled under 27.06 of the County Court Rules, or the subsequent section in the Supreme Court Rules or Act, and the motion goes nowhere, this is a serious breakdown of the separation of powers and the administration of justice. Our government has to be held accountable and not just the parliament at election time, but the judiciary and the executive through our courts when ruled over by the people in civil and criminal matters in our courts.
4. The rules in Victoria make it far too easy to be labeled vexatious in all courts state and federal. The court registrars, masters, justices and Judges become deliberately blind and fail to see a cause of action when confronted with a writ that exposes

the breakdown in the Rule of Law. Frivolous and vexatious means “**insupportable in law**”, yet if the statement of claim is based on law and uses court precedence to establish jurisdiction then it should be heard according to law.

5. One of the jobs of our courts is to challenge any legislation that is passed by the executive and parliament, the only obstacle to this right is when the registrar or if one is able to get a writ filed that challenges legislation then the next obstacle is the unconstitutional single Judge whose ammunition consists of labeling the writ vexatious and frivolous and then awarding costs against the plaintiff.
6. The separation of powers is enshrined in our governments state and federal and this doctrine is found in our Commonwealth Constitution as well as our state Constitutions, and of course these Constitutions use the many times argued Imperial laws as their foundation yet in 1986 an inconsistent and unsupportable in law piece of legislation was brought in that has led to the separation of powers to be eroded away to be but a mere shadow of its original self, this frivolous and vexatious piece of legislation is the Australia Act 1986.
7. Your question “What rights should an alleged vexatious litigant have?” borders on dangerous ground as it suggests that we should break down **equity** in law. We all share equal rights and the foundation of that is found in the King James Bible, our Imperial laws and the Bill of Rights 1688. The Charter of Human Rights and Responsibility Act 2006 is being ignored by the courts. Our right to appeal is also enshrined in our laws and to restrict that is also a step back to mankind's dark past, refer to the history of Habeas Corpus between 1629-1640.
8. It is our parliament and courts that are vexatious and frivolous (unsupportable in law), evidence of this in Victoria is a bureaucratic beast in our state Supreme court called business unit 19, this is of great concern and demands an official independent investigation.
9. Our courts are on the edge of its own destruction, having allowed summary jurisdiction take hold in 1920, then in total contradiction to, Chapter III of the Commonwealth Constitution Act 1900, South Australia enacted section 5 of the Juries Act 1927 forbidding juries in civil matters which then led us to 1974 when the Family Law Act allowed single judges to reside in Commonwealth jurisdiction, the Australia Act 1986 being the last nail in the coffin which has led to the incorporation of our courts and now we are confronted with a closed door to our courts by being labeled vexatious and frivolous.
10. Vexatious and frivolous is also the only defense that some lawyers use and especially the government solicitors when they cannot defend the Statement of Claim that exposes the breakdown in our system, refer O’ Bryan Gargan (Community Law Resource Group) v Commonwealth CI-06-3878 Victoria.

Vexatious and frivolous is not a defense unless it can clearly show in laymens terms that any claim put before a Constitutional court is without genuine cause, therefore then and only then able to be labeled vexatious.

11. Our legal system is in danger of self destruction due to its consent to uphold summary and civil jurisdiction outside Constitutional parameters found in Chapter III of the Commonwealth Constitution the Imperial Acts and section 80 of the Judiciary Act 1903 (Cth).
12. The Committee needs to take into consideration section 8 of Habeas Corpus, found in the Imperial Acts Application Act 1980 (Vic), that no one in this country can be imprisoned, disseised of their freehold or **liberties** or **free customs**, or be **outlawed** or **exiled** or otherwise **destroyed** or **condemned** but by lawful judgment of their peers or the law of the land,(Constitution). To label someone vexatious is to be in breech of these basic democratic principles.

  
Signed Darryl O'Bryan