

Submission No. VL/35
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Law Reform Committee

Australian Corporate Lawyers Association

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Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
East Melbourne VIC 3002

Dear Sir or Madam

Inquiry into vexatious litigants

Thank you for your letter to the National President of the Australian Corporate Lawyers Association ("ACLA") dated 24 April 2008 and the opportunity to make a submission to your inquiry. As this is a Victorian inquiry, the Victorian Division of ACLA has been asked to make this submission.

ACLA is the peak national association representing the interests of lawyers working in the employment of corporations, governments and public sector agencies in Australia ('in-house lawyers'). In-house lawyers constitute around 25% of the total Australian legal profession.

ACLA operates through seven Divisions, based in all States, and in the ACT. ACLA's current membership exceeds 3000, of whom approximately 75% are practising in-house lawyers. Almost 1000 members are in Victoria.

ACLA has considered the position in Victoria in relation to vexatious litigants and the recent proposals in New South Wales. Our view is that Victoria should adopt the changes recently proposed by the NSW government, which will bring that state into line with Queensland, Western Australia and the Northern Territory. The key issues in NSW, which are consistent with those in Victoria, are:

1. The threshold for bringing proceedings in relation to vexatious litigants is too high. The Court must be satisfied that the person has 'habitually', 'persistently' and 'without any reasonable ground' brought vexatious legal proceedings in a court or tribunal.

Recommendation: that the Court should be satisfied that the person has 'frequently' brought such proceedings.

2. The Attorney General is the only person who can ask the Court to declare a person a vexatious litigant.

Recommendation: that the Solicitor General, the registrar of the Court and, with the leave of the Court, anyone with a sufficient interest in the matter should be able to make the application.

2.

3. Flexibility and discretion.

Recommendations: (i) that in addition to the Supreme Court, other suitable Victorian courts and tribunals should be able to make orders; (ii) that the Court be able to take into account proceedings brought in any Australian jurisdiction by the person involved; (iii) that the Court have flexibility in terms of orders it can make, ranging from prohibition against commencing proceedings to staying part of a proceeding.

We would be happy to discuss our proposals set out above. Please contact Peter Turner on 1300 558 550.

Yours sincerely

A handwritten signature in black ink that reads "David Patience". The signature is written in a cursive style with a large initial 'D'.

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