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Law Reform Committee



Magistrates' Court  
Victoria

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2 July 2008

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**FAXED**

Dear Ms Riseley

### **Inquiry into Vexatious Litigants**

Thank you for the opportunity to contribute to the inquiry into vexatious litigants. The response of the Magistrates' Court of Victoria (the Court) sets out the views of both the administration and the judiciary on this matter.

Vexatious litigants do not pose a significant impact for the administration of the Court. The arrangements whereby the Court is from time to time notified of a person being declared a vexatious litigant pursuant to section 21 of the *Supreme Court Act 1986* is well understood by Court administration.

In the past two years, the Court has received notice that two people have been declared vexatious litigants, and Practice Directions have been issued by the Principal Registrar to advise registry staff accordingly.

Set out below are some of the issues that the Court considers are relevant to different jurisdictions and should be considered in terms of the law and vexatious litigants.

#### ***Criminal***

Vexatious litigants within the criminal jurisdiction are usually parties that initiate private prosecutions or defendants that raise constitutional objections at their hearing.

Where a vexatious litigant initiates an unmeritorious private prosecution this is dealt with by the Director of Public Prosecutions taking over and terminating this kind of privately initiated prosecution. In Victoria the provisions that enable the Director of Public Prosecutions to take over a proceeding in respect of any summary or indictable offence is section 22(1)(b)(ii) of the *Public Prosecutions Act 1994*.

Some vexatious litigants are individuals that appear as defendants for minor matters and attempt to disrupt the hearing by raising constitutional objections to the jurisdiction of the Court. It is unlikely that the issues these types of vexatious litigants present to the Court could be dealt with legislatively. The Court relies on High Court of Australia case law to deal with these matters.

The Court's Criminal Law Committee has considered the issue of vexatious litigants and believes they do not currently present a significant issue for the criminal jurisdiction.

### ***Civil***

The judicial members of the Civil Rules Committee of the Court have considered the issue of vexatious litigants and do not believe they present a significant matter within the civil jurisdiction.

### ***Family Violence and Stalking***

Vexatious litigants are currently problematic within the family violence and stalking jurisdiction.

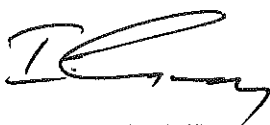
The Family Violence Protection Bill 2008 contains provisions (clauses 188 to 200) that will address the issue of vexatious litigants by providing the Court with jurisdiction to hear applications for an order. The provisions enable not only the Attorney General but also persons against whom allegedly vexatious applications and complaints have been made to apply to the Chief Magistrate, a Deputy Chief Magistrate or the President of the Children's Court for a declaration that a person is a vexatious litigant.

The Court anticipates these provisions will provide important protection to persons affected by the use of the legal process as a tool of harassment and intimidation within the family violence jurisdiction. The provisions ensure the significant and costly delays that can be incurred when applying under section 21 of the *Supreme Court Act 1986* for a person to be declared a vexatious litigant can be avoided.

The Family Violence Protection Bill 2008 will not extend the jurisdiction of the Court in relation to stalking matters. The Court would welcome the enactment of similar provisions for the stalking jurisdiction.

The Court looks forward to contributing to further consultations during this important inquiry.

Yours sincerely



**IAN L GRAY**  
Chief Magistrate



**CHARLOTTE STOCKWELL**  
Chief Executive Officer