



THE INSTITUTE OF LEGAL EXECUTIVES (VICTORIA)

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Ms. Kerry Riseley,
Executive Officer,
Victorian Parliament Law Reform Committee,
Parliament House,
Spring Street,
EAST MELBOURNE, 3002.

CONFIDENTIAL

Dear Ms. Riseley,

Re: Vexatious Litigants

We apologise for the delay in forwarding this response to you. In relation to those terms of reference in respect to which we feel we can respond, we note –

Vexatious litigants in Victoria –

- Vexatious litigants appear to be reasonably common, viewing the number of recent cases heard in the Supreme Court of Victoria alone.
- Vexatious litigants appear to be those who are dissatisfied with prior outcomes, whether those be by way of agreement or as a result of Court processes – whether this dissatisfaction with a prior outcome commenced at the time of the outcome, or subsequently over a period of time, is unclear.
- It is also unclear whether there is a connection between mental health and vexatious litigation – a course of action can be pursued at length on the basis of a deeply felt personal principle.

The effect of vexatious litigants on the justice system and others

- Clearly, from a number of recent cases, many vexatious litigants are prepared to lay their lack of success at the feet of their legal advisers, Government, and the Courts. Whilst some vexatious litigants may not wish to take responsibility for their actions and seek a ‘scapegoat’, others simply cannot accept a decision which is not as they wish it to be; or there may indeed be a ‘wrong’, but not one that can be corrected by the Courts.
- Vexatious litigants can have a damaging effect upon individuals. The effect on Court time is clear; however, the cost to an individual defending him or herself against the actions of a vexatious litigant can be shattering in terms of time, monetary cost, and emotional well-being.
- On the other hand, consideration also needs to be given to the issue that, whilst vexatious litigants impose an enormous toll on the Court system, and the victims of litigation, if

vexatious litigants were not able to take action in this way, there is a possibility that they may take matters into their own hands, with an even greater toll on the community.

Applying for a declaration

- It is doubtful whether many in the community are aware that a person can be declared a 'vexatious litigant'.
- We feel it should be left to the Attorney-General's Office to determine whether a declaration should be sought; although community awareness of the fact that the Attorney-General can make a determination would certainly be of assistance to parties who are victims of vexatious litigants.

Who is a vexatious litigant, and powers of the Court

- All Courts and Tribunals should have the right to declare a person a vexatious litigant; albeit always with a right of appeal to the Supreme Court. The Courts and Tribunals should have such rights as empower them to effect the proper administration of justice, including making adverse costs orders¹.

Vexatious litigants and representation

- Although it is preferable that a litigant be represented, mandating representation would be an unfair burden to impose on a litigant. Additionally, it would also be unfair to provide free legal representation to an alleged vexatious litigant when there are so many persons who may have meritorious claims but who are unable to proceed because they cannot afford representation.

Balancing rights

- Allowing Courts and Tribunals the right to declare a person a vexatious litigant, but with a right of appeal to the Supreme Court, would strike a fair balance between the rights of an alleged vexatious litigant, who may at some time very well have a meritorious claim, and those falling victim to continuous and unrelenting litigation.
- The circumstances surrounding the declaration of a person as a vexatious litigant in another jurisdiction should be taken into account, but a declaration should not necessarily 'automatically' apply across all Courts and Tribunals.

Support services

- Vexatious litigants should most definitely be referred to such support services as may be available.

Yours faithfully,



(Miss) Roz Curnow
Chief Executive Officer
on behalf of the Council of the Institute

¹ i.e. sub-section 97(7) Administration and Probate Act 1958