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Law Reform Committee

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Mr Johan Scheffer MLC
Chair
Parliament of Victoria
Law Reform Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

Inquiry Into Vexatious Litigants

Thank you for your invitation to EPA for a submission to your Committee's inquiry into vexatious litigants.

EPA's submission is attached, and I apologise for the delay in getting this to you.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'M. Bourke'.

MICK BOURKE
CHAIRMAN

9 / 7 / 2008

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The Environment Protection Authority ("EPA" or "the Authority") thanks the Law Reform Committee for the invitation to make a submission as part of the Committee's Inquiry into Vexatious Litigants. Thank you also for the Issues Paper.

In response, the Authority makes the following submission, addressing only those Questions and Issues from the Issues Paper that are reproduced below in the Executive Summary. Some elaboration follows, with a document in support attached. Please note that the Authority seeks the protection of Parliamentary privilege for the appended document because it contains personal information.

EXECUTIVE SUMMARY

QUESTIONS AND ISSUES	EPA SUBMISSION
<p><u>Who is a vexatious litigant under Victoria's laws?</u></p> <p><i>Does the law in Victoria make it too easy or too difficult for a person to be declared a vexatious litigant?</i></p>	<p>Too difficult.</p>
<p><u>What should the 'test' be for determining whether a person is a vexatious litigant? For example, should the test be that the person has brought vexatious legal proceedings 'frequently', rather than stricter test of 'habitually' and 'persistently'?</u></p>	<p>Frequently.</p>
<p><u>Should the Supreme Court (or other courts and tribunals if appropriate) be able to consider other criteria? For example, should it be able to consider:</u></p> <ul style="list-style-type: none"> - the way the person has conducted the litigation? - the person's motive for bringing the litigation, e.g. whether the proceedings were brought to harass or annoy another person or to cause delay or detriment? 	<p>Yes.</p> <p>Yes.</p>
<p><u>Should the Supreme Court be able to take into account any interlocutory (or interim) applications that the person has brought during the litigation?</u></p>	<p>Yes.</p>
<p><u>Other ways to respond to vexatious litigants</u></p> <p><i>Are there any laws that would help courts and tribunals respond to vexatious litigants that should be introduced in Victoria?</i></p>	<p>No: but the public sector would be helped by a register of potential vexatious litigants.</p>
<p><u>The impact of vexatious litigation in other federal, State and Territory courts</u></p> <p><i>If a person is declared a vexatious litigant by a federal court or a court in another State or Territory, what effect should that have in Victoria? For example:</i></p> <ul style="list-style-type: none"> - Should the declaration automatically apply in Victoria as well? - Should the Supreme Court (or other courts and tribunals if appropriate) be able to take account of the person's litigation in federal or other State or Territory courts when they are considering whether to declare the person a vexatious litigant in Victoria? 	<p>Yes.</p> <p>Yes – and also the question of whether the manner in which the litigation and related activities are conducted constitutes an OHS risk to – or harassment of – the staff of the party being litigated.</p>

FURTHER DETAIL OF THE SUBMISSION

In essence, the Authority submits that:

- (1) the definition of "vexatious litigant" be broadened by adding "or frequently" immediately after "habitually" in section 21(2)(a) of the *Supreme Court Act 1986* ("the Act");
- (2) a confidential public sector register should be established listing, jurisdiction by jurisdiction, those persons placing inordinate demands on the legal and other resources of any government department, agency or semi-public body;
- (3) in determining whether to declare a person a vexatious litigant, the relevant court be able to take into account:
 - (a) the person's litigation in other jurisdictions; and
 - (b) whether the manner in which the litigation and related activities are conducted constitutes an OHS risk to – or harassment of – the staff of the party being litigated.