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Law Reform Committee



VICTORIA POLICE

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Mr John Scheffer MLC
Chair
Parliament of Victoria Law Reform Committee
Parliament House
Spring Street
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Dear Mr Scheffer,

INQUIRY INTO VEXATIOUS LITIGANTS – ISSUE PAPER

Thank you for your invitation to comment on the Parliament of Victoria Law Reform Committee's inquiry into vexatious litigants. Many of the issues covered within this paper are of interest to Victoria Police.

As your initial research has suggested, Victoria Police is often affected by individuals that could be classed as vexatious, and considerable time and effort is utilised in responding to their claims that are without foundation.

To further the discussion on this topic, please find attached the Victoria Police response to some of the specific questions and issues that have been raised.

Once again, I would like to thank you for inviting Victoria Police to comment on this paper and we would be grateful if we were included in any ongoing consultations. We would also welcome the opportunity to appear at a public hearing on this issue.

I hope these comments will be of assistance to you and if you require any further information, the Victoria Police contact officer is Senior Sergeant Mark Galliot (Ph. 9247 3049).

Yours sincerely,

Christine Nixon APM
Chief Commissioner

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VICTORIA POLICE

VEXATIOUS LITIGANTS IN VICTORIA

Victoria Police recognises the right of Victorians to access justice and to seek remedies from the various courts and tribunals within this State and agrees that this right is a key feature of our democratic society that is governed by the rule of law.

However, Victoria Police also acknowledges that considerable time and expenditure is invested in combating applications and legal process that have been instigated “habitually, persistently and without any reasonable ground” by some individuals. The diversion of these resources from core policing duties restricts the level of service that is able to be provided to the broader community and therefore Victoria Police supports the tempering of an individuals rights in certain circumstances.

It is noted that despite this provision operating for 80 years only 14 people in Victoria have been declared by the Supreme Court to be vexatious litigants. It was envisaged that with the clarification to the operative section by the *Supreme Court (Vexatious Litigants) Act 2003* that further individuals would now have been declared, however this amendment has not significantly increased the number of applications to be determined by the Supreme Court.

THE EFFECT OF VEXATIOUS LITIGANTS ON THE JUSTICE SYSTEM

The elements required to have a person declared as a vexatious litigant necessitate a prolonged period of unsubstantiated litigation that must be processed through Victorian courts and tribunals before enough evidence is gained to launch an application by the Attorney General.

The courts and tribunals in Victoria provide an equitable and professional service to all stakeholders and customers, nevertheless in some instances it may appear that potential vexatious litigants are afforded an unreasonable and disproportionate amount of support in pursuing their complaints that on any objective and independent analysis lacks the required substance. Consequently, court resources and limited hearing capacity are devoted to baseless claims at the expense of legitimate court users.

THE EFFECT ON INDIVIDUALS AND AGENCIES WHO ARE VICTIMS OF VEXATIOUS LITIGANTS

As previously submitted, the concentration of time in responding to vexatious litigants and related complaints diverts attention from finite police resources.

There is significant expenditure (both financial and non financial) exhausted in managing and responding to groundless claims made by vexatious litigants including:

- Voluminous applications seeking Freedom of Information material.

- Equal Opportunity Applications determined at the Victorian Civil and Administrative Tribunal (VCAT).
- Interlocutory matters such as multiple witness subpoenas.
- Criminal charges and civil process.

In some cases these applicants have escalated their behaviour that has resulted in police members seeking the protection of intervention orders or other court sanctioned relief.

Victoria Police has noted an increase in unsubstantiated complaints being referred to the VCAT anti discrimination list after complainants have had their applications declined by the Victorian Equal Opportunity and Human Rights Commission. Consequently, Victoria Police has been required to expend resources in defending these complaints usually without recourse to the recuperation of costs when claims are dismissed. Observers have noted that the option of agitating a complaint through to a judicial forum such as VCAT can, in some instances, validate the process in the mind of the complainant and is financially detrimental to the responding agency.

This behaviour has also been identified by Victoria Police as a risk that can impact on individual and collective workplace health. Apart from the large financial costs associated in defending these claims an increased burden is placed upon police members when legal process is instigated against them. The Australian Centre for Policing Research has previously identified the stressors faced by police upon receipt of civil process (even fanciful and vexatious claims) and this is compounded in Victoria as under the current legislative model police cannot be indemnified for their actions up front.

APPLYING FOR A DECLARATION UNDER VICTORIA'S VEXATIOUS LITIGANT LAWS

Victoria Police appreciates that any restriction on an individual's rights must be carefully considered and that all available evidence must be presented to support an application. However, previous applications have been considered and rejected due to the restrictive, lengthy (in one case in excess of three years without a result) and time consuming current process. Consequently this provision within the *Supreme Court Act* has not been utilised to its full extent.

Order 21 Rule 1 of the current *Federal Court Rules* provides that an Order declaring a person as a vexatious litigant may be made by the court on its own motion, on the application of the Commonwealth Attorney General or on the application of the Registrar. If the current provision was extended in Victoria in line with these Rules and more individuals were declared as vexatious then the present imposition on Victoria Police resources may be reduced.