

12 June 2008

Submission No. VL/9
Received 18/06/2008
Law Reform Committee



The Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

INQUIRY INTO VEXATIOUS LITIGANTS

I am writing to you in relation to the Committee inquiry into vexatious litigants currently being undertaken. You have sought this Council's comments in relation to the Committee's inquiry, being to:

- (a) inquire into the effectiveness of current legislative provisions in dealing with vexatious litigants; and
- (b) make recommendations, which better enable the courts to more efficiently and effectively perform their role while preserving the community's general right of access to the Victorian courts.

For the record, this Council has not often encountered parties that have displayed such a level of habitual, persistent and groundless litigation as to be labelled 'vexatious'.

It is this Council's view that access to the justice system is a fundamental human right at common law. It is noted this right has been given statutory recognition in section 24 of the *Charter of Human Rights and Responsibilities Act 2006* which provides:

"24 Fair hearing

- (1) *A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing".*

Whilst there are circumstances in which a Council may have ongoing and expensive dealings with litigants (some of whom may be perceived as vexatious), it considers that broadening the rights of bodies or persons to declare a litigant 'vexatious' would not be a reasonable restriction on human rights.

In Council's experience it is often an individual running his or her case without legal representation that leads to unnecessary litigation or prolongs the litigation through the Appeal process. However the ability of individuals to access the justice system is fundamental and given that legal aid funding is limited and does not extend to all areas of litigation, it would be unfair to penalise such litigants.

Council considers that the current process as provided under section 21 of the *Supreme Court Act* 1986, for the Attorney General to make the application to the Supreme Court to have a party declared vexatious is an appropriate one. The Attorney General, as the Executive's Chief elected legal officer, is the appropriate official to determine whether such applications should be presented to the Court.

Whilst Council does not suggest any legislative change is warranted, it does consider that there should be clearer administrative guidelines for the process of applying to the Attorney General to have a party declared a vexatious litigant.

If you have any further queries in respect to this submission please contact Kim Wood the Council's Manager Legal Services on 9658 9863.

Yours sincerely

A handwritten signature in black ink that reads "K Alexander". The signature is written in a cursive style with a checkmark at the end.

Dr Kathy Alexander
Chief Executive Officer

CoM reference

#4648227