VEXATIOUS PROCEEDINGS RESTRICTION BILL 2002

Second Reading

Resumed from 20 February.

MS SUE WALKER (Nedlands) [11.16 am]: I support this Bill and congratulate the former coalition on its preparation. In preparing to speak on this Bill, I researched Bills introduced into the third session of the Thirty-fifth Parliament 1999-2000 and found that on Wednesday, 28 June 2000, the then Attorney General, Peter Foss, introduced this same Bill into the Legislative Council. It is a credit to Hon Peter Foss that he understood so well the enormous problems that the legal profession, criminal and civil, has to face in dealing with vexatious litigants. This Bill will repeal the Vexatious Proceedings Restriction Act 1930. I have taken the opportunity of looking at the second reading speech on that Bill, and it makes interesting reading, because we can say the same things today. The then Attorney General was Hon T.A.L. Davy, member for West Perth, and in the second reading he said -

> Every member of the legal profession, every judge, and a great many members of the public are well aware that one peculiar form of mania in the human mind is the litigious form. The ordinary normal human being, of course, would be quite unable to conduct litigation of any magnitude without the assistance of a member of the legal profession. But there are a few quaint people who have acquired sufficient knowledge of the procedure of the courts to get themselves before the court without help. And apparently, as soon as they have acquired that knowledge, they spend most of their time in bringing absurd actions. Every State in Australia always has one person who is well recognised as a public litigious nuisance.

From experience I know at least three or four people in this State who were real menaces when I was involved in the legal system. It is impossible to explain the number of times that person A, who is probably the most well-known and longest-standing vexatious litigant in this State, has been to court. He has boxes and boxes of litigation at the Public Trust Office and has caused judges and government legal people to attend court on numerous occasions. As the Attorney General said in 1930, these people get a little knowledge of the legal system and can go to court and conduct their own proceedings. The reason they conduct their own proceedings is, as he said also -

> The point is that people of the kind against whom this Bill is aimed are quite unable to get any legal assistance, because they become so frivolous and absurd that no reputable member of the legal profession would appear for them.

That is true. It was suggested by Mr Corboy to the then Attorney General that these people should be named. I would be reluctant to do that because they are an embarrassment to their families. Family members often know that the person is litigious. It would not serve any purpose.

My experience of person A, apart from having prosecuted him in a fitness to stand trial matter in which he was found fit to stand trial, is that he would often attend the office of the Director of Public Prosecutions with numerous documents. The documents would contain the names of between 20 and 30 people, from the Premier to the last prosecutor who attended court on behalf of the DPP. Such people hang around the courts a fair bit. They are sometimes involved in criminal proceedings. Another person, person B, attached himself to person A and then he started. He obtained a little knowledge of the system - nobody wanted to represent him - and he started worrying the system. It causes an enormous amount of work for a lot of people. Over the years I have seen person C get attached to these people, and so it goes on.

Quite a few people would get very hot under the collar about this but my view has always been that they are playing a game with the system as vexatious litigants. As I knew the system, I knew the response such people would get. I was quite relaxed about dealing with such people. A lot of people who are not in the system are not so relaxed. By coincidence, only yesterday, someone from my electorate contacted me about a vexatious litigant. The person did not know about this legislation. He is a professional person who has been the subject of nuisance litigation for three years. That is how long such things can go on for. Once vexatious litigants get hold of a person and bring complaints and summonses, the person the subject of litigation is taken away from his practice and becomes involved in either civil or criminal proceedings. It causes enormous stress. This legislation is extremely important. I know it will be very welcome by people in the legal profession from judges down.

I spoke to my colleague the member for Kingsley yesterday and we discussed an example of what a vexatious litigant can do with a little knowledge. Such people lodge caveats. I understand that the Attorney General may propose an amendment to the legislation. I am not sure whether he wants to respond.

Mr McGinty: I have not given it any thought.

Ms SUE WALKER: The Attorney General may give it some thought by the time we finish. In this State a person with no interest in a particular piece of land can attend the registrar's office with a statutory declaration and lodge an application for a caveat. It prevents the owner of the land from dealing in the land. It is often used maliciously or viciously. It can be used by estranged partners. A person has to obtain a mandatory interlocutory injunction or something of that nature to remove the caveat. It takes time and money to do that. The member for Kingsley told me of someone she knew who was doing that consistently to a large number of people. In any event, the Vexatious Proceedings Restriction Act was rather restrictive; it allowed only the Attorney General to make an application to have a person declared a vexatious litigant. That is in section 3 of the Act, which is a small Act. An application can be heard before only the Supreme Court and the court must be satisfied that the proceedings in question are vexatious; that they were begun habitually and persistently; and that they were without any reasonable ground. That restriction is being removed. In fact, it will be widened. On Wednesday, 20 February this year, the Attorney General stated in an article in *The West Australian* that the legislation would widen the definition under which a person could be declared a vexatious litigant.

I credit Hon Peter Foss, the former Attorney General, for this legislation, as well as the Law Reform Commission. In his second reading speech at page 8355 of *Hansard* on 28 June 2000, he stated -

> I bring to members' attention that the Western Australian Law Reform Commission, in its September 1999 review of the criminal and civil justice system, also considered the problem of vexatious litigants.

He then referred to the pages at which the subject was discussed. He continued -

> While drafting of the Bill was proceeding, the Law Reform Commission report was being prepared. I am pleased to advise that nine of the 10 changes recommended by the Law Reform Commission have been adopted in one form or another in the Bill. The exception is that the commission recommended that the Act be named the "Malicious Proceedings Restriction Act". However, it has been decided that the word "vexatious" should continue to apply.
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> The reason for this is that the word "malicious" at law conveys an evil intent as an element in guilt, whereas the word "vexatious" refers to litigation which is designed to annoy or which has the effect of causing annoyance, and as such the word "vexatious" is used in all other States and Territories. As an action may be vexatious but not malicious, use of the term "malicious" may raise the bar for establishing whether a person is a "vexatious" litigant.

It is true that vexatious litigants are usually impecunious. I referred previously to persons A, B and C, who are currently a nuisance in the court system in Western Australia. I know they are completely impecunious. It would not matter if people were awarded costs against them because they would never get the money. That is one of the problems with the current legislation and the state of play.

I understand that since the Act came into operation in 1930 there have been eight applications, seven of which were successful. Hon Peter Foss said that the numbers may not appear significant; however, he reminded the Council that only the Attorney General could bring an application. The Bill will widen the range of persons who can make an application to declare someone a vexatious litigant. An order can be made by a judge of either the Supreme Court or the District Court on its own motion. That is very important because the Supreme Court and the District Court are very well aware of the people who are vexatious litigants. The judges in each court obviously talk with each other, as do prosecutors and defence counsel. The vexatious litigants become very well known. It is absolutely right that the courts be able to make a declaration on their own motion.

Ms MacTiernan: I used to act for a vexatious defendant!

Ms SUE WALKER: The minister would be one of the very few. I will not mention the member for Innaloo. Maybe the minister is the only one. In addition, an application to a court to order that a person is a vexatious litigant may also be made by the Attorney General or the principal registrar of the relevant court. It can also be made by a person against whom another person has instituted vexatious proceedings. A person with a sufficient interest in the matter also may, with the leave of the court, make that application. It is important for a person to be able to redress the problem. I am very heartened by it, particularly on behalf of a constituent who is coming to see me. I am hoping that this Bill goes through very quickly.

In protecting the defendant, the first stage of the process is that the application for leave is conducted ex parte; that is, without the potential defendant being notified or otherwise made aware of the action. To ensure that all relevant material is before the court, the application for leave is to be accompanied by an affidavit disclosing all material facts, whether supporting or adverse. It is specifically provided that at this stage the application for leave is not to be served on any other person. The court may dismiss the application for leave if the affidavit does not disclose everything required to be disclosed, if the proceedings are vexatious, or if there is no prima facie ground for the proceedings.

As the Attorney General said, the Bill will give Western Australia a new, modern and efficient process, by which persons may be declared to be vexatious litigants. In the event that the court decides not to dismiss the application, before granting leave, it will order service of the application and the affidavit on the proposed defendant, the original applicant for the order and the Attorney General. This is done so that those persons will all have an opportunity to oppose the application for leave to proceed. The court must hear those persons if they so wish. Another key feature of the Bill is that it provides for the rescission or variation of an order that a person is a vexatious litigant and for the recognition of orders made in another jurisdiction.

I would like to keep my further comments for the consideration in detail stage. This is a very important Bill, which will be welcomed by the judiciary and the legal profession in Western Australia, and I commend it.

MR BOARD (Murdoch) [11.32 am]: I will add a few brief comments on this very important Bill. I commend the Attorney General for bringing it forward, and I hope that it will proceed quickly through this House and the other place. Although this Bill may not affect large numbers of people in Western Australia, it affects the quality of life of the people who are affected. People on the receiving end of vexatious litigation, and who are constantly abused and accused by people using the legal system, find themselves in intolerable situations. We know of situations around the State, in which people are harassed on a daily basis by their neighbours or other individuals who, for whatever reasons, find it extremely pleasurable to use whatever means they have at their disposal to get around the spirit of the law, and to apply it in such a way as to cause great distress. Some people in my electorate have for some years been on the receiving end of vexatious litigation, including caveats, restraining orders, constant harassment, complaints to the police and all kinds of court actions. This costs many of them tens of thousands of dollars to defend themselves, with no effect other than to occupy the time of the court and to benefit certain individuals who want to use the system to gain some strange satisfaction from persecuting their neighbours under the umbrella of the law.

These people are known to the community, legislators, the courts and the police. Yet, under the law, the presumption of innocence, and by the freedom given to individuals in this State to pursue justice, they are protected. It is a strange anomaly in which the people who are being victimised are not protected, and the people who cause this chaos in our community are protected. Hopefully, as a result of this Bill, some protection can be provided for the real innocent parties - the victims of vexatious litigation.

Some other States were proactive in this area before Western Australia. I do not have any legal training, but I understand that in other States individuals cannot bring criminal prosecutions against other individuals. There must be another mechanism for that. That is still allowed in Western Australia, which fuels the capacity for some of these individuals -

Ms MacTiernan: There have been some very interesting cases in places where it has been possible to do that - in Scotland, for example. There have been some very important cases of private prosecutions, in which the Crown has failed to act and private lawyers have instituted major criminal prosecutions and succeeded.

Mr BOARD: I thank the minister for that information. I know that the provision is there for a very important reason, but it does allow people to use the law in a vexatious way.

Ms MacTiernan: There is no evidence of that is there?

Mr BOARD: Yes, there is. I am sure the Attorney General could show the minister boxes of material on such cases. That is the bottom line of what is happening to make this Bill necessary. The Attorney General, in his second reading speech, indicated why the Bill deals with vexatious proceedings rather than malicious proceedings, as recommended by the committee inquiring into this matter. I appreciate the reasons for this, and support the Attorney General's choice, because it helps to protect individuals. It is easier to prove that people are being vexatious than it is to prove malice.

The member for Nedlands brought up the issue of caveats. I have received a number of complaints from people who have had caveats lodged against their property. They are constantly getting those caveats dismissed, and then further caveats are lodged. This is not only costly, but also very inconvenient and difficult, particularly in the sale of a property. I am sure other members have similar examples. The member for Kingsley will at some stage outline the issues relating to caveats.

I want to commend the Attorney General for bringing this Bill forward and to indicate that the Opposition is very keen to see it proceed quickly. The Opposition hopes that the legislation will provide some protection for people whose quality of life has diminished greatly. I know people who have had to sell their houses, suffering a much diminished financial situation; people whose children are harassed; and people who, on a daily basis, must literally barricade themselves against people who get some sort of satisfaction from using legal proceedings against their neighbours.

I commend this Bill. I hope that the courts will now be able to sort out those vexatious people in our community. We know who many of them are. I also hope that the information the courts, the Office of the Director of Public Prosecutions and the Attorney General have as a result of previous cases is able to be utilised to assist people when further vexatious proceedings come forward.

MRS EDWARDES (Kingsley) [11.40 am]: I also support the legislation. I thank the Attorney General for allowing his staff to meet this morning with those constituents of the member for Murdoch who have been subjected to a large number of civil and criminal proceedings instigated by Dr Michael. They, too, thank the Attorney General for allowing them to meet his staff and receive their advice. They also commend Peter Wayte, from the Crown Solicitor's Office, for all the work he has done. He has given them a great deal of comfort over the years, even though he has not been able to ease their frustration. Those people wanted to raise with the Attorney General's staff issues related to the ease with which actions can be commenced. It is often the case that statutory declarations, statements and the like can contain lies and therefore be subject to perjury once they have been used in a proceeding; yet, these people have been able to achieve very little through such actions against this gentleman. Intimidation and perhaps vexatious behaviour is often displayed prior to any action being taken, and individuals are baited in an effort to provoke a reaction that adds to the litigant's case. That is a concern. A vexatious litigant often intimidates people, raises a large number of actions and issues summonses against a large number of witnesses. This adds to not only the costs and the wasted time of the persons against whom the action is taken, but also the time and abuse of the court. The courts have a policy to go out of their way to help a litigant who is representing himself. However, a vexatious litigant uses the court processes to his own advantage. If costs are awarded against a vexatious litigant, he usually does not pay, and it transpires that he has set up his affairs in such a way as to make it impossible for anybody to take action against him. It is always the case that if a decision goes against a vexatious litigant, he will appeal it to the nth degree. Such people represent themselves, and it is the victims who end up paying lawyers large sums of money in an endeavour to defend themselves in defamation and perjury actions and criminal proceedings. That leads to a great deal of frustration, apart from the time and costs involved. The court is also abused. Vexatious litigants often show a total lack of respect for the court. If a decision goes against a vexatious litigant, he will attack the magistrate in an endeavour to get him to stand himself down. A vexatious litigant will attack any lawyer who might say things that are not in his favour. Anybody who appears to take the side of a victim is also subjected to constant abuse.

The actions of a vexatious litigant go far beyond those matters that are taken to court. A pattern of behaviour and conduct is displayed outside the court process. People are often subjected to large numbers of letters and telephones calls to themselves and their employers. Often they are followed. The issue becomes very serious. Those matters cannot be addressed by this legislation. Often there is a pattern of behaviour that demonstrates that the person will not let up on his victims.

This Bill will help people who are the subject of vexatious proceedings in three ways. First, it will remove the high burden that must be proven, which is that there has been a habitual and persistent action. Currently, for an order to be made, the applicant must prove the existence of a pattern of actions that have been proven to be vexatious. Such an application was made in 1994 or 1995. I believe it was one that I, as the then Attorney General, signed off on and allowed to be made. The judge in the first instance was Justice Hasluck, and the case was appealed on two occasions. The Crown was not ultimately successful, which was unfortunate. The case turned on the particular words in the current Act. Hopefully, this legislation addresses that issue and will allow the Crown to take action after just one vexatious proceeding. It is the view of the Crown Solicitor's Office that if the current Act required that the conduct of a person and the way in which he managed his litigation be taken into account, it would have got an order in that action. This Bill also provides that a range of people may initiate the action. It allows anyone, with the leave of the court, to apply for the order. They can apply to the Crown Solicitor's Office or the registrars of the Supreme Court and/or the District Court. The Crown may take action of its own accord.

The courts know very well who are the vexatious litigants. Even though they attempt to bend over backwards in an endeavour to assist litigants who are defending themselves, they know who the vexatious litigants are. Hopefully this legislation will allow an order to be made soon after those vexatious litigants have commenced action. More than one person is the subject of this legislation; a number of vexatious litigants are well known to the courts. Hopefully this Bill will allow those people to exit the court process.

The other speakers have mentioned caveats. I put it to the Attorney General's staff this morning that, rather than waiting for a review of the land statutes before addressing the issue of what is required to lodge an application for a caveat - such as supporting affidavits, etc - a vexatious order could also apply to caveats. Therefore, if it can apply to civil proceedings, it can apply to criminal proceedings and tribunal decisions. As the legislation goes through the Parliament, an amendment could be made to allow the registrar at the titles office not to accept a caveat when an order for a vexatious litigant has been granted.

Mr McGinty: Caveats are administrative in nature. This legislation has applied only to court proceedings of a judicial nature. A question has been posed about whether this relates to restraining orders, because quite often vexatious litigants will apply to the court for restraining orders. The legislation obviously picks that up. Once we move into administrative actions, they are well beyond the scope of what has traditionally been covered in this area. That is not to say that people do not use caveats vexatiously, but it might be a different problem.

Mrs EDWARDES: I will give the Attorney General an example of a case in my electorate. Even though the action that has been taken against Dr Michael has not succeeded, it is likely to succeed under the Bill before us; it will be open to him to continue to annoy the hell out of his neighbours by lodging caveats, and he has already done that. Again, the level of frustration felt by people can increase. The incident in my electorate involved a woman who had been married and divorced. She had received the house as part of the divorce settlement and it was in her name. She took up with another man who moved in for a matter of months. That relationship ended and when he left the house, he immediately lodged a caveat. He was not happy that the relationship had ended and he did not accept it, so he mischievously lodged a caveat. It took this woman years to get the caveat lifted; every time one caveat was lifted, he would lodge another one and then she would have to get that caveat lifted. I can imagine a person's frustration at that. Some people would feel lost within the legal proceedings if that were to happen to them.

The minister spoke about administrative proceedings. However, having the caveat lifted is part of a legal proceeding. I understand that the Attorney General's staff will look at that issue. If he could do that, it would help a large number of people in the community who are subjected to that type of action on a regular basis, but whom we just do not know about. It costs people money and time.

Mr McGinty: I agree with you that it is a very expensive form of nuisance that people can use to harass individuals. It is akin to vexatious proceedings; however, it is not. It should be looked at most probably in the context of the Land Administration Act or some other procedure rather than in this legislation, because it is not a court proceeding. That is the problem.

Mrs EDWARDES: Can the Attorney General wait for his advice? If we wait for the review of the Act, it could be several years before amendments are proclaimed.

Mr McGinty: That is the problem with the proposition I am putting to you.

Mrs EDWARDES: That would still subject people to a large number of vexatious actions that will fall outside this legislation. It is unfair in time, frustration and cost for these people. A lot of people would be very thankful if that issue were addressed.

A number of other issues arise out of the behaviour of vexatious litigants. Privacy, or the lack of it, is one such issue. Also, police time is taken up and there is a cost involved because summonses are constantly being served. As I mentioned earlier, these proceedings take up the time of the court because a large number of summonses for witnesses are issued. Many of those witnesses have no relevance whatsoever; nor can they add anything to the case before the court.

On behalf of many people who have been subjected to this type of action, I thank the Attorney General for bringing forward this legislation. It is very similar to the legislation the former Attorney General had drafted. As such, we strongly support the Bill and look forward to its quick passage through both Houses of Parliament.

MR McGINTY (Fremantle - Attorney General) [11.55 am]: I thank members opposite for their contributions in support of this legislation. A number of points have been raised, and we will deal with some of those matters in greater detail in the consideration in detail stage. As I indicated by way of interjection to the member for Kingsley, although the administrative actions of government under the Land Administration Act and the lodging of caveats clearly fit into the area of harassment, vexatious use of actions and things of that nature, there may well be other areas in the administrative functioning of government in which people vexatiously use actions that do not constitute a vexatious use of judicial proceedings. My general inclination is to say that there is a problem, but that I do not think this is the vehicle through which to provide a remedy. The member for Kingsley has asked that we keep an open mind on that matter and see whether the advice she has sought from my staff for me will change my mind.

Mrs Edwardes: I am only too happy to help.

Mr McGINTY: I thank the member for that. I broadly share the sentiments that have been expressed by the three members opposite. In the past week, I have dealt with two vexatious litigation matters. In one of those matters, I have authorised an application to be made to the Supreme Court under the existing legislation. That is being set in train now that it has been approved. The other case involved the harassment of the Muslim community in Western Australia. I have asked its lawyer to provide me with a submission on whether the Vexatious Proceedings Restriction Act could be used. The member for Kingsley has referred to the recent decisions of the Supreme Court in this State which highlight the shortcomings in the existing legislation. If this

new legislation were in place, each of the applications that I have discussed in the past week would be somewhat easier, and greater relief would be provided to the people who are being subjected to harassment and victimisation by the use of vexatious proceedings.

I also hope the legislation will have an expeditious passage through the Parliament. I know there is no problem in this House. Judging by the waiting list for legislation in the Legislative Council, the bottleneck appears there. I hope it starts to work longer hours or changes its procedures in some way, so that it can expedite not only this but also other legislation sometime this year.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Interpretation -

Ms SUE WALKER: The definition of "Court" under this clause is -

> . . . the Supreme Court, a Judge, the District Court, or a District Court Judge;

Given that the definition of "proceedings" in this clause includes a reference to a court of summary jurisdiction, why has a magistrate of the Court of Petty Sessions not been included in the definition of "Court"?

Mr McGINTY: Currently, proceedings can be instituted only by the Attorney General and in the Supreme Court, in respect of the Supreme Court. This legislation will extend that jurisdiction to include the District Court. I am advised that at this stage, it is not intended for that to apply to the Magistrates Court, notwithstanding that on the face of it people can use Magistrates Court proceedings as vexatiously as those that are brought before the superior courts. In the fullness of time, this legislation will probably extend that far, but at this stage no recommendation has been made to extend that jurisdiction beyond the Supreme and District Courts. On my part, I would happily see the scope of this legislation apply to the Magistrates Court.

I have just received some advice from my adviser and will retract all those comments.

Ms Sue Walker: Will those comments be struck off *Hansard*?

Mr McGINTY: No. I wish to correct what I have just said. I have now received clearer advice on this point. The only court that could previously declare a person a vexatious litigant was the Supreme Court. This legislation will extend that jurisdiction to the District Court to give it the ability to receive an application made under this Act to deal with a person who is a vexatious litigant. Once a person is declared a vexatious litigant, he is restricted from making any application to any court, including the Magistrates Court. That restriction would be in terms of the order made against that person as a vexatious litigant. In other words, a person who had been declared a vexatious litigant would need to seek the leave of the court to make an application.

Ms SUE WALKER: Only the Supreme and District Courts will be able to declare a person a vexatious litigant under this legislation. If that person then decided to go to the Local Court or the Court of Petty Sessions to institute, for example, a private prosecution, how would that work? How would the magistrate deal with that? Who would have to deal with that? Would it be the magistrate or the person against whom the charge is brought?

Mr McGinty: If a private prosecution were to be launched in the Magistrates Court -

Ms SUE WALKER: I am just giving an example of a person who has been declared a vexatious litigant instituting a proceeding in another court. How would the system work? The vexatious litigant knows that the District and Supreme Courts know him fairly well, so he decides to try the Magistrates or Local Court. How would that work in practice? I note that clause 6 of the Bill talks about Local Courts, District Courts and courts of summary jurisdiction in terms of an application for leave to institute proceedings. How does that fit in with only the Supreme and District Courts being able to declare a person a vexatious litigant? Does the minister understand where I am coming from?

Mr McGinty: Could you please put your question again?

Ms SUE WALKER: What is the procedure to deal with a person who has been declared a vexatious litigant by the District or Supreme Courts but who then goes to the Magistrates Court? The whole process starts again. Why cannot the Magistrates or Local Courts be given the ability to declare a person a vexatious litigant in their jurisdictions when they know that a person is bringing forward matters vexatiously? There is nothing about this in the report of the Law Reform Commission, although I must admit that I have had only a brief glance through it. Given that clause 6 provides leave to institute proceedings, what happens when a person who has been

declared a vexatious litigant in the District or Supreme Court attempts to bring a matter before a Magistrates Court?

Mr McGINTY: A person who has been declared a vexatious litigant by a particular court is considered a vexatious litigant by all courts. At an administrative level, the registrars of the various courts have on record those who have been declared vexatious litigants. This information will be contained in computer records and the like that can be searched before applications from such people are accepted. In accordance with clause 6, a vexatious litigant will be required to seek leave to institute proceedings. If a vexatious litigant wants to initiate proceedings in a Magistrates Court, he or she must seek leave in a Magistrates Court. Where a court declares a person to be vexatious litigant, such a declaration is internally recorded by courts at all levels.

Ms Sue Walker: Does it follow that magistrates or local court registrars can then deal with a vexatious litigant in the way that is outlined in clause 4? If the computer reveals that the person in question is a vexatious litigant, will the application be struck off?

Mr McGINTY: Clause 4 deals with an application that must be made to either the District or the Supreme Court to declare that a litigant is a vexatious litigant, and sets out the procedure for the declaration that a person is vexatious. Once an order declaring a person to be vexatious has been made, clause 4 no longer has any application. It simply provides the mechanism to make the order. We must then move to clause 6, which spells out what must be done by vexatious litigants if they wish to initiate further proceedings. Essentially, they must apply to the court in which they wish to initiate proceedings for leave to bring those proceedings forward, notwithstanding the fact that they are a vexatious litigant.

Clause put and passed.

Clause 4: Restriction of vexatious proceedings -

Ms SUE WALKER: Clause 4(2) states -

> An order under subsection (1) may be made by the Court on its own motion or on the application of -
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> (a) the Attorney General;
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> (b) the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court; or
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> (c) with the leave of the Court -
>
> (i) a person against whom another person has instituted or conducted vexatious proceedings; or
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> (ii) a person who has a sufficient interest in the matter.

The Law Reform Commission report included the Director of Public Prosecutions in its list of people who should be able to make an application. Why is the DPP not included in this Bill? What is the rationale for not including the DPP? Will the minister include the DPP under clause 4(2)(ii)?

Mr McGinty: The DPP may fall under the category of a person who has sufficient interest. However, I am told that the DPP did not want the power. At first blush, it is not apparent why the DPP would want such power. At the risk of being seen to agree with the DPP, his judgment is probably right.

Ms SUE WALKER: Why?

Mr McGinty: It is the role of the DPP to prosecute people. It is not immediately apparent how a prosecutor of indictable matters would run up against vexatious litigants on a regular basis.

Ms SUE WALKER: If the DPP ascertained from a series of briefs that a person was a vexatious litigant, would it not be in the interests of the DPP to seek leave to have that person declared a vexatious litigant?

Mr McGinty: The DPP has the discretion to proceed or not proceed, and it is his view that he will be covered by clause 4(2)(ii). If the member is referring to a person who vexatiously begins proceedings that would be taken over by the DPP, the DPP has the power not to proceed, so it would cease to be a problem.

Ms SUE WALKER: What power provides that the DPP does not have to proceed with a vexatious litigant?

Mr McGinty: Assuming that the prosecution taken over by the DPP has begun by a vexatious litigant, the DPP has every discretion not to proceed with the prosecution for which he has taken responsibility.

Ms SUE WALKER: I am referring to the situation before a person has been declared a vexatious litigant, and to the group of people who can apply to have a person declared vexatious under clause 4(2).

Mr McGinty: It is not apparent to me why the DPP would want the power to declare a person to be a vexatious litigant.

Ms SUE WALKER: If the vexatious litigant has again brought a false complaint to the Court of Petty Sessions and comes before the DPP, and if the DPP has a series of files to demonstrate that such action is vexatious and has been brought before the court before -

Mr McGinty: The DPP would use his discretion not to proceed because the unreliability of the evidence would be sufficient power to achieve the same result.

Ms SUE WALKER: I do not necessarily agree with that. Is it true that the DPP did not want that power?

Mr McGinty: That is what I am told.

Mrs EDWARDES: I would like to hear more from the member for Nedlands.

Ms SUE WALKER: Can the registrar of the land titles office also be included in clause 4(2)?

Mr McGinty: As was previously discussed, this Bill will place a restriction upon people who use legal or judicial proceedings vexatiously. The registrar of the land titles office exercises an administrative function; therefore, it would not be appropriate to give power to such a person.

Ms SUE WALKER: Does the minister want to apply the restriction to only civil and criminal proceedings?

Mr McGinty: These restrictions have always been confined to court proceedings. The lodging of a caveat is not a court or a judicial proceeding. It is a problem that fits into an administrative description, rather than a judicial one, if we want to characterise the nature of the problem. The member for Kingsley asked if I would keep an open mind about this aspect when advice came through from the Crown Solicitor's Office, which is soon to be the State Solicitor's Office. That is something I am happy to do.

Mrs Edwardes: It may be that an amendment will be made in the other place.

Mr McGinty: That is a possibility.

Ms SUE WALKER: It will ultimately, though, by that step be a civil proceeding.

Mr McGinty: No. The lodging of a caveat is not a civil proceeding.

Ms SUE WALKER: The person whose property is the subject of the caveat will need to get a mandatory interlocutory injunction in the Supreme Court to have the caveat removed. It is, therefore, the commencement of a civil proceeding. I do not know whether in that case the Registrar of Titles may come under subclause (2)(c)(ii); namely, a person who has a sufficient interest in the matter. A person may have sold his house and have to settle the purchase of another house. However, just to cause him a bit of aggravation, someone has lodged a caveat on the title. Therefore, the person cannot settle on the house he has sold and cannot settle on the house he has bought and has to go to the Supreme Court to have the caveat removed. A person may have a history of lodging caveats in the same street, and each person in that street may have had to go to the Supreme Court to get the caveat removed. That would be a civil proceeding. Why could not the Registrar of Titles be a person who has a sufficient interest in the matter, because this person is continually lodging caveats and thereby causing a lot of work for his office?

Mr McGINTY: The problem with that proposition is that we would effectively be declaring someone who is a defendant a vexatious litigant. The member for Armadale said she has represented a number of people in that category; and I will not take that further. Conceptually it is not the defendant who is initiating the proceedings. We want to place a limitation on the initiation of proceedings by someone who behaves vexatiously. It is a problem. Someone who lodges a caveat vexatiously is someone against whom administrative action should be taken in the context of the Land Administration Act. However, I cannot see how a condition precedent to judicial proceedings - in other words, the lodging of a caveat - is conceptually any different from requiring a crime to be committed before we prosecute someone for that crime. What we are talking about is the stage of the proceedings. In this case, although there is a problem, it is not of a judicial proceeding nature. The member's suggested remedy has misconceived the way in which things are currently constructed, and it will mean that we will need to extend the scope of this provision to include things of an administrative nature in government, because people may also do other things for the purpose of harassment. It is expensive to have a caveat withdrawn and requires a proceeding in the Supreme Court. It is, therefore, an ideal vehicle for people who wish to harass. However, it is not within the scope of this legislation.

Clause put and passed.

Clauses 5 to 13 put and passed.

Schedule 1 put and passed.

Title put and passed.

Third Reading

Bill read a third time, on motion by Mr McGinty (Attorney General), and transmitted to the Council.