

VEXATIOUS PROCEEDINGS RESTRICTION BILL 2002

Explanatory Notes

Clause 1 Short title

Short title of the Act.

Clause 2 Commencement

The proposed Act will come into operation on a date, or dates, to be specified by way of proclamation made by the Governor in Executive Council. It is likely that the proposed Act will come into effect once the necessary regulations required under the Act, have been settled.

Clause 3 Interpretation

Clause 3 defines commonly used terms throughout the Bill. The term “Court” includes the District Court.

The phrases “institute proceedings”, “proceedings” and “vexatious proceedings” which are used extensively throughout the proposed Act are defined. “Vexatious proceedings” are proceedings that are either an abuse of the process of a court or tribunal, those intended to harass or annoy, or those instituted or pursued without reasonable cause or conducted in such manner. “Proceedings” are widely defined and include all legal actions and matters including interlocutory actions.

Clause 4 Restriction of vexatious proceedings

Clause 4 sets out how and when a Court may make an order restricting certain persons from instituting “vexatious” proceedings. The Court must be satisfied that a person has or is likely to institute or conduct vexatious proceedings. If it is satisfied then, under subclause (1), it may order the stay of proceedings and prohibit that person from instituting any proceedings, or proceedings of a particular class, without the leave of the court.

Subclause (2) provides that an order that a person is a vexatious litigant may be made by the Court on its own motion, or on the application of the Attorney General, or the application of the Principal Registrars of the Supreme or District Courts as the case requires. In addition, a person against whom vexatious proceedings have been taken or a person with a sufficient interest in the matter, may, with the leave of the Court, make such an application.

The Court, under subclause (3), must give a person a hearing or an opportunity of being heard before either staying proceedings or declaring that a person is a vexatious litigant.

Clause 5 Effect of an order to stay proceedings or to prohibit the institution of proceedings without leave

Clause 5 sets out the effect of an order being made that a person is a vexatious litigant. Subclause (1) of clause 5 provides that if an order has been made under proposed section 4(1)(d) that a person is prohibited from issuing proceedings, ie, that they are a vexatious litigant, then that person may not institute such proceedings.

Subclause (2) provides a penalty for the institution of any proceedings without the leave of the court. If proceedings are instituted without leave and are dismissed then costs may be awarded against the vexatious litigant. Under subclause (3) those costs are recoverable as if there had been an ordinary action and costs were awarded for an action which had been struck out. A subpoena, summons to a witness, warrant, or process procured to be issued by a person by a vexatious litigant is void and of no affect.

Clause 6 Leave to institute proceedings

Clause 6 details the process to be followed by a vexatious litigant who seeks leave of the court to institute proceedings. In the first stage the vexatious litigant proceeds *ex parte*. This means that the proposed defendant need not be served with any process or worried by a potential action. The court may dismiss the proposed action at this time. If the court thinks that there may be a case for granting leave to the vexatious litigant to proceed then it may commence the second stage and allow service on the person against whom proceedings are to be instituted.

The first stage of proceedings is in subclauses (1) to (5). Subclause (1) provides that an application for leave may be made to the Supreme or District Courts, the lower courts or to a tribunal. The application must be accompanied by an affidavit. Subclause (3) provides that the affidavit is to list all the occasions on which an application has been made. The affidavit must also disclose all facts material to the application, whether supporting or adverse to the application.

Subclause (2) allows the court or tribunal to dismiss the application even if the applicant does not appear at the hearing. The effect of this is that the court or tribunal may deal with an application and it will not be allowed to continue on foot by the non-appearance of the vexatious litigant.

Subclause (4) provides that neither the application nor the affidavit may be served without leave of the court given under subclause (6).

If the affidavit accompanying the application for leave does not disclose everything required to be disclosed, the proceedings are vexatious, or if there is no *prima facie* ground for the proceedings the court or tribunal may dismiss the application under subsection (5).

If the application passes the threshold tests set down in subclauses (1) to (5) the court or tribunal may order service of the application and accompanying affidavit on the person against whom the proceedings are to be instituted, and on the person who originally applied to have to plaintiff declared a vexatious litigant, and on the Attorney General. Subclause (6) provides for this service and gives those persons an opportunity to oppose the application for leave.

Subclause (7) provides that the court or tribunal is not to grant leave to proceed unless it is satisfied both that the proceedings are not vexatious and that there is a prima facie ground for the proceedings. Subclause (8) confirms that both the applicant and the persons listed in subsection (6) (the proposed defendant, the person who made the original application that the person be declared a vexatious litigant, and the Attorney General) are to be given an opportunity to be heard on the application. At the hearing the court or tribunal may receive as evidence any record of evidence given or the affidavit filed with the application.

Under subclause (10) the court or tribunal may dismiss the application or grant leave for the action to proceed. Leave to proceed may be made subject to such conditions as the court or tribunal thinks fit.

Clause 7 Order may be rescinded or varied

Clause 7 provides that the court or tribunal which made the order that a person is a vexatious litigant may vary or rescind the order. The person against whom the order staying or prohibiting proceedings was made may make such an application. The persons who sought the order, being the Attorney General, the Principal Registrar of either the Supreme or District Court, or the person against whom proceedings were earlier instituted, are also entitled to make an application for an order varying or rescinding the order.

Clause 8 Restriction on a person who is a vexatious litigant in a court other than a court of this State

Clause 8 provides for the recognition in Western Australia of orders made in the High Court, the Federal Court or a court in another jurisdiction that a person is a vexatious litigant. Any proceedings commenced in Western Australia by such a person may be stayed as if there was an equivalent order in place in Western Australia. The clause also provides that the Supreme Court may rescind or vary orders which are so deemed to have effect in Western Australia, as if they had been made in this State.

Clause 9 Notification of orders and rescissions or variations of orders

Clause 9 provides that if a person is declared to be a vexatious litigant notice must be published in the Gazette. If the order is rescinded or varies that must also be Gazetted.

Clause 10 Regulations

Clause 10(1) is a general regulation making power. Clause 10(2) provides that regulations may provide for forms and fees required for applications made under the proposed Act.

Clause 11 Repeal of Vexatious Proceedings Restriction Act 1930 (WA)

Clause 11 provides for the repeal of the *Vexatious Proceedings Restriction Act 1930 (WA)* when the proposed Act comes into force.

Clause 12 Savings and transitional

This clause provides savings provisions to maintain the effectiveness of applications commenced or made under the previous Act. Subclause (1) provides that an application commenced under the repealed Act may be continued and completed as if the repealed Act had not been repealed. Under subclause (2) if an order has been made under the repealed Act then the new Act proposed by this Bill applies, with all necessary modifications, as if the order had been made under the proposed Act.

Clause 13 Consequential amendments

Clause 13 gives effect to a number of consequential amendments. Provision is made for the Supreme Court and the District Court to make rules of court relating to the provisions of this proposed Act. References in the *District Court of Western Australia Act 1969* (WA) and the *Liquor Licensing Act 1988* (WA) that those tribunals are inferior courts within the meaning of the repealed Act are deleted.