

Western Australia

## **Vexatious Proceedings Restriction Act 2002**

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As at 18 Sep 2002

No. 23 of 2002

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## Vexatious Proceedings Restriction Act 2002

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## Vexatious Proceedings Restriction Act 2002

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No. 23 of 2002

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An Act to —

- restrict the institution of vexatious proceedings;
- amend the *District Court of Western Australia Act 1969*, the *Liquor Licensing Act 1988*, and the *Supreme Court Act 1935*;
- repeal the *Vexatious Proceedings Restriction Act 1930*,  
and for related purposes.

[Assented to 18 September 2002]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Vexatious Proceedings Restriction Act 2002*.

**2. Commencement**

This Act comes into operation on such day as is fixed by proclamation.

**3. Interpretation**

In this Act, unless the contrary intention appears —

**“Court”** means the Supreme Court, a Judge, the District Court, or a District Court Judge;

**“institute proceedings”** includes —

- (a) in the case of civil proceedings, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced against a party;
- (b) in the case of proceedings before a tribunal, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced before the tribunal;
- (c) in the case of criminal proceedings, the laying of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) in the case of civil or criminal proceedings, or proceedings before a tribunal, the taking of a step or the making of an application which may be necessary to commence an appeal in relation to the proceedings or to a decision or determination made in the course of the proceedings;

**“proceedings”** includes —

- (a) any cause, matter, action, suit, proceeding, trial, or inquiry of any kind within the jurisdiction of any court, including a court of summary jurisdiction, or a tribunal;
- (b) any proceedings, including interlocutory proceedings, taken in connection with or incidental to proceedings pending before a court, including a court of summary jurisdiction, or a tribunal; and
- (c) an appeal from a decision or determination, whether or not a final decision or determination, of a court, including a court of summary jurisdiction, or a tribunal;

**“vexatious proceedings”** means proceedings —

- (a) which are an abuse of the process of a court or a tribunal;
- (b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;
- (c) instituted or pursued without reasonable ground; or
- (d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose.

**4. Restriction of vexatious proceedings**

- (1) If a Court is satisfied that —
  - (a) a person has instituted or conducted vexatious proceedings (whether before or after the commencement of this Act); or

- (b) it is likely that the person will institute or conduct vexatious proceedings,

the Court may make either or both of the following orders —

- (c) an order staying any proceedings, either as to the whole or part of the proceedings, that have been instituted by that person;
- (d) an order prohibiting that person from instituting proceedings, or proceedings of a particular class, without the leave of a court or tribunal, as the case requires under section 6(1).

- (2) An order under subsection (1) may be made by the Court on its own motion or on the application of —

- (a) the Attorney General;
- (b) the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court; or
- (c) with the leave of the Court —
  - (i) a person against whom another person has instituted or conducted vexatious proceedings; or
  - (ii) a person who has a sufficient interest in the matter.

- (3) The Court must not make an order under subsection (1) —

- (a) staying any proceedings that have been instituted by a person, either as to the whole or part of the proceedings; or
- (b) prohibiting a person from instituting proceedings, or proceedings of a particular class,

without hearing that person or giving that person an opportunity of being heard.

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

- (1) Proceedings are not to be instituted in contravention of an order under section 4(1)(d).
- (2) If —
  - (a) despite subsection (1), proceedings are instituted in contravention of an order under section 4(1)(d); and
  - (b) those proceedings are struck out by a court or tribunal in the purported exercise of a power to strike out the proceedings,  
  
the court or tribunal has the power to award costs to the same extent as if the proceedings had been brought and had been struck out by the court or tribunal.
- (3) Costs awarded under subsection (2) are recoverable in the same manner as if the proceedings could have been instituted in the court or tribunal and had been struck out by the court or tribunal.
- (4) A subpoena, summons to a witness, warrant, or process procured to be issued by a person in any proceedings stayed by an order under section 4(1)(c) or instituted by a person in contravention of an order under section 4(1)(d) is of no force or effect in law.

**6. Leave to institute proceedings**

- (1) An application for leave to institute proceedings, or proceedings of a particular class (in this section called “**the proceedings**”), that is required by an order under section 4(1)(d) is to be made —
  - (a) in the case of proceedings in the Supreme Court, to the Supreme Court or a Judge;



- (b) in the case of proceedings in the District Court, to the District Court or a District Court Judge;
- (c) in the case of proceedings in a Local Court, to a Local Court;
- (d) in the case of proceedings in a court of summary jurisdiction, to a magistrate; or
- (e) in the case of proceedings before a tribunal, to the tribunal,

and is to be accompanied by an affidavit in support of the application.

- (2) The court or tribunal to which the application for leave is made may dismiss the application even if the applicant does not appear at a hearing of the application.
- (3) The affidavit accompanying the application for leave is to list all the occasions on which the applicant has made an application for leave under subsection (1) and to disclose all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) Neither the application nor the affidavit are to be served on any other person unless the court or tribunal orders under subsection (6) that they are to be served on another person.
- (5) The court or tribunal is to dismiss the application for leave if it considers that —
  - (a) the affidavit does not disclose everything required by subsection (3) to be disclosed;
  - (b) the proceedings are vexatious proceedings; or
  - (c) there is no prima facie ground for the proceedings.

- (6) Before the court or tribunal grants an application for leave it is to —
- (a) order that a copy of the application and accompanying affidavit be served on —
    - (i) the person against whom the proceedings are to be instituted;
    - (ii) any person who made an application under section 4(2)(c) in relation to the applicant; and
    - (iii) the Attorney General;
  - and
  - (b) give those persons an opportunity to oppose the application for leave.
- (7) Leave is not to be granted unless the court or tribunal is satisfied that —
- (a) the proceedings are not vexatious proceedings; and
  - (b) there is a prima facie ground for the proceedings.
- (8) The applicant and the persons referred to in subsection (6)(a) are to be given an opportunity to be heard at the hearing of the application for leave.
- (9) At the hearing of the application for leave, the court or tribunal may receive as evidence any record of evidence given or affidavit filed in connection with an application for leave mentioned in subsection (3).
- (10) The court or tribunal may dispose of the application for leave by —
- (a) dismissing the application; or
  - (b) granting leave to institute the proceedings, subject to such conditions as the court or tribunal thinks fit.

**7. Order may be rescinded or varied**

On the application of —

- (a) a person in respect of whom there is in force an order under section 4(1) —
  - (i) staying any proceedings, either as to the whole or part of the proceedings, that have been instituted by that person; or
  - (ii) prohibiting that person from instituting proceedings, or proceedings of a particular class, without the leave of a court or tribunal;

or

- (b) a person referred to in section 4(2),

the court or a judge of the court in which the order was made may rescind or vary the order.

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

- (1) This section applies if, in the High Court or the Federal Court of Australia, or in another State or a Territory —
  - (a) there is in force in respect of a person a declaration that the person is a vexatious litigant; or
  - (b) there is in force in respect of a person an order that the person must not, without the leave of a court, institute proceedings, or proceedings of a particular class, in a court or tribunal or that any proceedings instituted by the person in a court or tribunal must not be continued by the person without the leave of a court or tribunal.
- (2) While a declaration or order is in force —
  - (a) any proceedings, or proceedings of the particular class referred to in the order, as the case may be, instituted by

that person in a court or tribunal of this State are stayed and the provisions of this Act (other than section 7) apply, with all necessary modifications, to and in relation to that person as if an order staying any proceedings or proceedings of the particular class referred to in the order, either as to the whole or part of the proceedings, that have been instituted by that person had been made under section 4(1)(c);

- (b) the person is prohibited from instituting proceedings or proceedings of the particular class referred to in the order, as the case may be, in a court or tribunal of this State without the leave of the court or tribunal, as the case requires, under section 6 and the provisions of this Act (other than section 7) apply, with all necessary modifications, to and in relation to that person as if an order prohibiting that person from instituting proceedings, or proceedings of that particular class, as the case may be, without the leave of a court or tribunal had been made under section 4(1)(d); and
- (c) on the application of —
  - (i) a person in respect of whom a declaration has been made;
  - (ii) a person in respect of whom an order has been made; or
  - (iii) a person referred to in section 4(2),  
the Supreme Court may in relation to the institution of proceedings in a court or tribunal of this State —
    - (iv) rescind the declaration; or
    - (v) rescind or vary the order.

**9. Notification of orders and rescissions or variations of orders**

- (1) If an order is made under section 4(1), the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court, as the case may be, must publish a copy of the order in the *Gazette*.
- (2) If an order is rescinded or varied under section 7 or 8(2)(c), the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court, as the case may be, must give notice of the rescission or variation in the *Gazette*.

**10. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may provide for the following —
  - (a) forms for applications under this Act;
  - (b) fees for applications under this Act.

**11. Repeal of *Vexatious Proceedings Restriction Act 1930***

The *Vexatious Proceedings Restriction Act 1930* is repealed.

**12. Saving and transitional**

- (1) An application made under the *Vexatious Proceedings Restriction Act 1930* and pending or in progress on the day on which this Act comes into operation may be continued and completed as if this Act had not come into operation.
- (2) Where, before the day on which this Act comes into operation, an order has been made under section 3 of the *Vexatious*

*Proceedings Restriction Act 1930* that no legal proceedings shall, without the leave of the Supreme Court, be instituted by a person in the Supreme Court or in any inferior court, the provisions of this Act apply, with all necessary modifications, to and in relation to that order and that person as if an order had been made under section 4(1)(d) of this Act.

- (3) Nothing in this section affects the operation of the *Interpretation Act 1984*.

**13. Consequential amendments**

Schedule 1 has effect.

**Schedule 1 — Consequential amendments**

[s. 13]

**1. District Court of Western Australia Act 1969 amended**

- (1) Section 5(4) of the *District Court of Western Australia Act 1969*\* (the “Act”) is repealed.
- (2) Section 88(2) of the Act is amended as follows:
  - (a) by deleting the full stop after paragraph (h) and inserting instead a semicolon;
  - (b) by inserting after paragraph (h) the following paragraph —

“

    - (i) for regulating the practice and procedure in relation to applications under the *Vexatious Proceedings Restriction Act 2002*.

”.

[\* Reprinted as at 19 January 2001.  
For subsequent amendments see Acts Nos. 27 and 53 of 2000.]

**2. Liquor Licensing Act 1988 amended**

Section 8(5) of the *Liquor Licensing Act 1988*\* is repealed.

[\* Reprinted as at 23 February 2001.  
For subsequent amendments see Act No. 10 of 2001.]

**Schedule 1** Consequential amendments

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**3. *Supreme Court Act 1935* amended**

After section 167(1)(q) of the *Supreme Court Act 1935*\* the following paragraph is inserted —

“

- (r) For regulating the practice and procedure in relation to applications under the *Vexatious Proceedings Restriction Act 2002*.

”.

[\* *Reprinted as at 9 February 2001.*

*For subsequent amendments see Act No. 27 of 2000.*]

