



Western Australia

Vexatious Proceedings Restriction Act 2002

Compare between:

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Vexatious Proceedings Restriction Act 2002

An Act to —

- restrict the institution of vexatious proceedings;
- amend the *District Court of Western Australia Act 1969*², the *Liquor Licensing Act 1988*², and the *Supreme Court Act 1935*²;
- repeal the *Vexatious Proceedings Restriction Act 1930*, and for related purposes.

1. Short title

This Act may be cited as the *Vexatious Proceedings Restriction Act 2002*¹.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation¹.

3. ~~Interpretation~~[Terms used](#)

In this Act, unless the contrary intention appears —

Court means the Supreme Court, a ~~Judge~~[judge](#), the District Court, or a District Court ~~Judge~~[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; [and](#)

- (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; [and](#)
- (c) in the case of criminal proceedings, the commencement of a prosecution 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; [and](#)
- (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; [or](#)
- (b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose; [or](#)
- (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.

[Section 3 amended ~~by~~ No. 84 of 2004 s. 80.]

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; or
 - (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;~~[judge; or](#)
 - (b) in the case of proceedings in the District Court, to the District Court or a District Court ~~Judge;~~[judge; or](#)
 - (c) in the case of proceedings before any other court, to the court; or
 - [(d) deleted]*
 - (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; [or](#)
 - (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; and
 - (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.

[Section 6 amended ~~by~~ No. 59 of 2004 s. 141.]

