



# **Vexatious Proceedings Act 2005**

**Current as at 5 June 2017**





## Queensland

# Vexatious Proceedings Act 2005

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# Vexatious Proceedings Act 2005

## An Act to restrict vexatious proceedings

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Vexatious Proceedings Act 2005*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

#### 3 Definitions

The dictionary in the schedule defines particular words used in this Act.

#### 4 Inherent jurisdiction and powers not affected

This Act does not affect any inherent jurisdiction of a court or tribunal or any powers a court or tribunal has other than under this Act to restrict vexatious proceedings.

### Part 2 Vexatious proceedings orders

#### 5 Applications for vexatious proceedings orders

- (1) Any of the following persons may apply to the Court for a vexatious proceedings order in relation to a person mentioned in section 6(1)(a) or (b)—

- (a) the Attorney-General;
  - (b) the Crown solicitor;
  - (c) the registrar of the Court;
  - (d) a person against whom another person has instituted or conducted a vexatious proceeding;
  - (e) a person who has a sufficient interest in the matter.
- (2) An application may be made by a person mentioned in subsection (1)(d) or (e) only with the leave of the Court.

## **6 Making vexatious proceedings orders**

- (1) This section applies if the Court is satisfied that a person is—
- (a) a person who has frequently instituted or conducted vexatious proceedings in Australia; or
  - (b) a person who, acting in concert with a person who is subject to a vexatious proceedings order or who is mentioned in paragraph (a), has instituted or conducted a vexatious proceeding in Australia.
- (2) The Court may make any or all of the following orders—
- (a) an order staying all or part of any proceeding in Queensland already instituted by the person;
  - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland;
  - (c) any other order the Court considers appropriate in relation to the person.

*Examples of another order for paragraph (c)—*

- an order directing that the person may only file documents by mail
- an order to give security for costs
- an order for costs

- (3) The Court may make a vexatious proceedings order on its own initiative or on the application of a person mentioned in section 5(1).
- (4) The Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (5) For subsection (1), the Court may have regard to—
  - (a) proceedings instituted or conducted in any Australian court or tribunal, including proceedings instituted or conducted before the commencement of this section; and
  - (b) orders made by any Australian court or tribunal, including orders made before the commencement of this section.

## **7 Order may be varied or set aside**

- (1) The Court may, by order, vary or set aside a vexatious proceedings order.
- (2) The Court may make the order on its own initiative or on the application of—
  - (a) the person subject to the vexatious proceedings order; or
  - (b) a person mentioned in section 5(1).

## **8 Order may be reinstated**

- (1) This section applies if—
  - (a) the Court sets aside a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in Queensland; and
  - (b) the Court is satisfied that, within 5 years of the vexatious proceedings order being set aside—
    - (i) the person has instituted or conducted a vexatious proceeding in an Australian court or tribunal; or

- (ii) the person has acted in concert with another person who has instituted or conducted a vexatious proceeding in an Australian court or tribunal.
- (2) The Court may—
  - (a) by order, reinstate the vexatious proceedings order; and
  - (b) make any other order the Court considers appropriate in relation to the person, including, for example, an order varying the vexatious proceedings order.
- (3) The Court may make an order under subsection (2) on its own initiative or on the application of a person mentioned in section 5(1).
- (4) The Court must not reinstate a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

## **9 Notification and register of orders**

- (1) This section applies in relation to—
  - (a) a vexatious proceedings order; or
  - (b) an order varying or setting aside a vexatious proceedings order; or
  - (c) an order reinstating a vexatious proceedings order; or
  - (d) an order made under section 8(2)(b).
- (2) The registrar of the Court must arrange for a copy of the order to be—
  - (a) published in the gazette within 14 days after the order is made; and
  - (b) entered in a publicly available register kept for the purposes of this Act in the registry of the Court at Brisbane within 7 days after the order is made.
- (3) The registrar of the Court may also arrange for details of the order to be published in another way.



*Example—*

publication on the Court’s website

- (4) The registrar of the Court may remove a copy of an order from the register mentioned in subsection (2)(b) if the registrar is satisfied that the person in relation to whom the order was made has died.

## **Part 3                    Particular consequences of    vexatious proceedings orders**

### **10        Vexatious proceedings order prohibiting institution of proceedings**

- (1) If the Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in Queensland—
  - (a) the person may not institute proceedings, or proceedings of the particular type, in Queensland without the leave of the Court under section 13; and
  - (b) another person may not, acting in concert with the person, institute proceedings, or proceedings of the particular type, in Queensland without the leave of the Court under section 13.
- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is permanently stayed.
- (3) Without limiting subsection (2), the Court, or the court or tribunal in which the proceeding is instituted, may make—
  - (a) an order declaring that a proceeding is a proceeding to which subsection (2) applies; and
  - (b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.
- (4) The Court, or the court or tribunal in which the proceeding is instituted, may make an order under subsection (3) on its own

initiative or on the application of a person mentioned in section 5(1).

## **11 Application for leave to institute a proceeding**

- (1) This section applies to a person (the *applicant*) who is—
  - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland; or
  - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the Court for leave to institute a proceeding that is subject to the order.
- (3) The applicant must file an affidavit with the application that—
  - (a) lists all occasions on which the applicant has applied for leave under—
    - (i) this section; or
    - (ii) before the commencement of this section, the *Vexatious Litigants Act 1981*, section 8 or 9; and
  - (b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section; and
  - (c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on any person unless—
  - (a) an order is made under section 13(1)(a); and
  - (b) the copy is served in accordance with the order.
- (5) The Court may dispose of the application by—
  - (a) dismissing the application under section 12; or
  - (b) granting the application under section 13.

- (6) The applicant may not appeal from a decision disposing of the application.

## **12 Dismissing application for leave**

- (1) The Court must dismiss an application made under section 11 for leave to institute a proceeding if it considers—
- (a) the affidavit does not substantially comply with section 11(3); or
  - (b) the proceeding is a vexatious proceeding.
- (2) The Court may dismiss the application—
- (a) without an oral hearing; or
  - (b) if the Court considers an oral hearing is necessary—even if the applicant does not appear at the hearing.
- (3) If the Court dismisses the application, the Court must give the applicant a copy of—
- (a) the order dismissing the application; and
  - (b) the Court’s reasons.

## **13 Granting application for leave**

- (1) Before the Court grants an application made under section 11 for leave to institute a proceeding, it must—
- (a) order that the applicant serve each relevant person with a copy of the application and affidavit and a notice that the person is entitled to appear and be heard on the application; and
  - (b) give the applicant and each relevant person, on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which

the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.

- (3) The Court may grant leave to institute a particular proceeding or a proceeding of a particular type (the *proceeding*), subject to the conditions the Court considers appropriate.
- (4) However, the Court may grant leave only if it is satisfied that the proceeding is not a vexatious proceeding.
- (5) In this section—

*relevant person*, in relation to the applicant for leave to institute the proceeding, means each of the following persons—

- (a) the person against whom the applicant proposes to institute the proceeding;
- (b) the Attorney-General;
- (c) the Crown solicitor;
- (d) the registrar of the Court if the registrar applied for a vexatious proceedings order in relation to the applicant;
- (e) any person mentioned in section 5(1)(d) or (e)—
  - (i) who, with the leave of the Court, applied for a vexatious proceedings order in relation to the applicant; and
  - (ii) who the Court considers should be served;
- (f) any person—
  - (i) who made an application in relation to the applicant under the *Vexatious Litigants Act 1981*, section 3(2) or 5(2) before the commencement of this section; and
  - (ii) who the Court considers should be served.

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## Part 4                      **Transitional provisions for repealed Vexatious Litigants Act 1981**

### 14        **Definitions for pt 4**

In this part—

*commencement* means the commencement of this section.

*repealed Act* means the *Vexatious Litigants Act 1981*.

### 15        **Repealed Act continues to apply to applications made before commencement**

- (1) This section applies if—
  - (a) an application has been made under the repealed Act;  
and
  - (b) immediately before the commencement, the application  
has not been decided.
- (2) The repealed Act continues to apply in relation to deciding the  
application as if the *Vexatious Proceedings Act 2005* had not  
been enacted.

### 16        **Orders under repealed Act taken to be orders under this Act**

- (1) An order under section 3 of the repealed Act that is in force  
immediately before the commencement is taken to be a  
vexatious proceedings order for the purposes of this Act.
- (2) An order under section 3 of the repealed Act that is made or  
reinstated on or after the commencement because of  
section 15 is taken to be a vexatious proceedings order for the  
purposes of this Act.

*Editor's note—*

See the *Vexatious Litigants Act 1981*, section 5 (Reinstatement of  
declaration of vexatious litigant).

- (3) If—
- (a) an order under section 4 of the repealed Act that revokes another order is in force immediately before the commencement; or
  - (b) an order under section 4 of the repealed Act that revokes another order is made on or after the commencement because of section 15;
- then—
- (c) for the purposes of this Act, the other order is taken to be a vexatious proceedings order that has been set aside; and
  - (d) section 8 applies in relation to the other order.

## **Part 4A                      Transitional provision for Court and Civil Legislation Amendment Act 2017**

### **16A      Application of Act to applications not decided before commencement**

- (1) This section applies if an application under section 11 was made, but not decided, before the commencement.
- (2) This Act continues to apply in relation to the application as if the *Court and Civil Legislation Amendment Act 2017*, section 255 had not been enacted.

## **Part 5                      Repeal**

### **17      Repeal of Vexatious Litigants Act 1981**

The Vexatious Litigants Act 1981 No. 35 is repealed.

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# Schedule Dictionary

## section 3

***Australian court or tribunal*** means a court or tribunal of the Commonwealth or of a State.

***Court*** means the Supreme Court.

***Court's website*** means the website administered by the Supreme Court Library for the Court and other courts.

*Editor's note—*

The website may be viewed at <<http://www.courts.qld.gov.au>>.

***decision*** includes determination.

***institute***, in relation to proceedings, includes—

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

***order*** includes declaration and injunction.

***proceeding*** includes—

- (a) any cause, matter, action, suit, proceeding, trial, complaint or inquiry of any kind within the jurisdiction of any court or tribunal; and

- (b) any proceeding, including any interlocutory proceeding, taken in connection with or incidental to a proceeding pending before a court or tribunal; and
- (c) any calling into question of a decision, whether or not a final decision, of a court or tribunal, and whether by appeal, challenge, review or in another way.

*proceedings of a particular type* includes—

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person; and
- (c) proceedings in a particular court or tribunal.

*vexatious proceeding* includes—

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued without reasonable ground; and
- (d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

*vexatious proceedings order* means an order made under section 6(2).



## 1 Index to endnotes

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- 5 List of annotations

## 2 Key

### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
<b>AIA</b>	= <b>Acts Interpretation Act 1954</b>	<b>(prev)</b>	= <b>previously</b>
<b>amd</b>	= <b>amended</b>	<b>proc</b>	= <b>proclamation</b>
<b>amd</b>	= <b>amendment</b>	<b>prov</b>	= <b>provision</b>
<b>t</b>			
<b>ch</b>	= <b>chapter</b>	<b>pt</b>	= <b>part</b>
<b>def</b>	= <b>definition</b>	<b>pubd</b>	= <b>published</b>
<b>div</b>	= <b>division</b>	<b>R[X]</b>	= <b>Reprint No. [X]</b>
<b>exp</b>	= <b>expires/expired</b>	<b>RA</b>	= <b>Reprints Act 1992</b>
<b>gaz</b>	= <b>gazette</b>	<b>reloc</b>	= <b>relocated</b>
<b>hdg</b>	= <b>heading</b>	<b>renu</b>	= <b>renumbered</b>
		<b>m</b>	
<b>ins</b>	= <b>inserted</b>	<b>rep</b>	= <b>repealed</b>
<b>lap</b>	= <b>lapsed</b>	<b>(retro</b>	= <b>retrospectively</b>
		<b>)</b>	
<b>notf</b>	= <b>notified</b>	<b>rv</b>	= <b>revised version</b>
<b>d</b>			
<b>num</b>	= <b>numbered</b>	<b>s</b>	= <b>section</b>

<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
<b>o in c</b>	= <b>order in council</b>	<b>sch</b>	= <b>schedule</b>
<b>om</b>	= <b>omitted</b>	<b>sdiv</b>	= <b>subdivision</b>
<b>orig</b>	= <b>original</b>	<b>SIA</b>	= <b>Statutory Instruments Act 1992</b>
<b>p</b>	= <b>page</b>	<b>SIR</b>	= <b>Statutory Instruments Regulation 2012</b>
<b>para</b>	= <b>paragraph</b>	<b>SL</b>	= <b>subordinate legislation</b>
<b>prec</b>	= <b>preceding</b>	<b>sub</b>	= <b>substituted</b>
<b>pres</b>	= <b>present</b>	<b>unnum</b>	= <b>unnumbered</b>
		<b>m</b>	
<b>prev</b>	= <b>previous</b>		

### 3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

<b>Reprint No.</b>	<b>Amendments included</b>	<b>Effective</b>	<b>Notes</b>
1	none	21 November 2005	

<b>Current as at</b>	<b>Amendments included</b>	<b>Notes</b>
28 September 2007 rv	2007 Act No. 37	RA s 35
5 June 2017	2017 Act No. 17	

## 4 List of legislation

### **Vexatious Proceedings Act 2005 No. 44**

date of assent 14 October 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 21 November 2005 (2005 SL No. 277)

amending legislation—

### **Justice and Other Legislation Amendment Act 2007 No. 37 pts 1, 33**

date of assent 29 August 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2007 (2007 SL No. 241)

### **Court and Civil Legislation Amendment Act 2017 No. 17**

date of assent 5 June 2017

s 1, pt 32 commenced on date of assent

## 5 List of annotations

### **Notification and register of orders**

s 9 amd 2007 No. 37 s 161

### **Dismissing application for leave**

s 12 amd 2017 No. 17 s 255

### **PART 4A—TRANSITIONAL PROVISION FOR COURT AND CIVIL LEGISLATION AMENDMENT ACT 2017**

pt hdg ins 2017 No. 17 s 256

### **Application of Act to applications not decided before commencement**

s 16A ins 2017 No. 17 s 256