



Vexatious Proceedings Act 2005

Reprinted as in force on 21 November 2005

Reprint No. 1

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Information about this reprint

This Act is reprinted as at 21 November 2005.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to omit the enacting words (s 42A).

This page is specific to this reprint. A table of reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



Queensland

Vexatious Proceedings Act 2005

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Vexatious Proceedings Act 2005

[reprinted as in force on 21 November 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.

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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.

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;¹ 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.

1 *Vexatious Litigants Act 1981*, section 8 (Proceedings by or with vexatious litigants require leave) or 9 (Process by or for vexatious litigants requires leave)

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 application may be dismissed even if the applicant does not appear at the hearing of the application.

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)² before the commencement of this section; and
 - (ii) who the Court considers should be served.

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*.

² *Vexatious Litigants Act 1981*, section 3 (Declaration of vexatious litigants upon application by public officials) or 5 (Reinstatement of declaration of vexatious litigant)

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 3³ 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 reinstated⁴ on or after the commencement because of section 15 is taken to be a vexatious proceedings order for the purposes of this Act.
- (3) If—
 - (a) an order under section 4⁵ 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—

3 *Vexatious Litigants Act 1981*, section 3 (Declaration of vexatious litigants upon application by public officials)

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

5 *Vexatious Litigants Act 1981*, section 4 (Revocation of s 3 order)

- (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 5 Repeal

17 Repeal of Vexatious Litigants Act 1981

The Vexatious Litigants Act 1981 No. 35 is repealed.

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.⁶

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

⁶ The website may be viewed at <<http://www.courts.qld.gov.au>>.

Schedule (continued)

- (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).

Endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Vexatious Proceedings Act 2005 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	21 November 2005	

5 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)