

1.3.1 What is a 'vexatious litigant'?

Page 10: Mr Martin Thomas from the Mental Health Legal Centre told the Committee 'the threat of being labeled vexatious and the perception of being troublesome' was a real concern for the Centre's clients. Other participants told the Committee that prisoners who bring legal proceedings are vulnerable to similar treatment.³⁷

2.3.1 Is a multidisciplinary approach appropriate?

Page 23: A correspondent to the *British Journal of Psychiatry* suggested '[q]uerulous paranoia is a diagnosis best left within the darkened past of psychiatry - perhaps pre-war Russia where Stalin often used "madness" to silence his critics'.⁷² (72 R Pal, 'In defence of complainants' (2005) *The British Journal of Psychiatry* 175)

3.2 Is the number of vexatious litigants increasing?

Page 32: Mr Simon Smith told the Committee that 'vexatious litigants are no more a problem for Australian courts than they have ever been.'¹¹¹

Figure 2 - vexatious litigant orders in Victoria and other jurisdictions by decade¹¹³

3.3.3 Litigation behaviour

Pages 35-6: Mr Julian Knight, the only declared vexatious litigant who made a submission to the Inquiry, told the Committee he 'utilized every appropriate and available avenue of dispute resolution: local prison management, official prison visitor, Corrections Victoria Head Office, and the Victorian Ombudsman'.¹²⁵ (125 Julian Knight, *Submission no.14,5*)

What is the subject matter of their dispute?

Page 39: Although frivolous disputes between prisoners and prison authorities have had a high profile in the past, particularly in the United States, this does not appear to have been a significant issue in Australia.¹⁴¹ Only one of Victoria's declared vexatious litigants is a prisoner. Mr Simon Smith told the Committee that he is only one of only two prisoners who have been declared vexatious in Australia.¹⁴²

Are all the legal proceedings unsuccessful or vexatious?

Page 49: In Mr M's case, the Court held that a substantial number, although not all, of the 18 proceedings relied on by the Attorney-General were vexatious (case study 13).¹⁸⁰ (180 *Attorney-General (Vic) v Knight* [2004] VSC 407, 8-35)

5.1.2 Comparison with other litigants

Page 74: Former solicitor and PhD candidate, Mr Simon Smith informed the Committee that the impact of vexatious proceedings by corporate litigants was significantly greater than that of individual vexatious litigants, although it is the latter who are more likely to be the subject of a vexatious litigant order. He cited one recent instance of 'corporate duelling' in the Federal Court which used 120 court days over five years.³⁰⁴ (304 Simon Smith, *Submission no.21,2*) The judge in that case stated, 'In my view, the expenditure of \$200 million (and counting) on a single piece of litigation is not only extraordinarily wasteful, but borders on scandalous.'³⁰⁵ (305 *Seven Network Limited v News Limited* [2007] FCA 1062, 1064) Mr Smith extrapolated that '[using that one case as a cost benchmark I estimate that is equivalent to every litigant in person declared vexatious in Victoria and Queensland in the last 77 years.'³⁰⁶ (306 Simon Smith, former solicitor and PhD candidate, Monash University, *Transcript of evidence*, Melbourne, 6 August 2008, 3. See also Julian knight, *Submission no.14, 6*)

6.1.1 Legal costs

Page 83: One newspaper article claimed that it cost the Victorian Government \$240 000 to defend 16 claims brought over a three-year period by another litigant who was subsequently declared vexatious. The author claimed Victoria's declared vexatious litigants had cost the Government nearly \$6.2 million in total, although this appears to be an extrapolation rather than an evidence-based estimate.³⁴⁴ (344 Carly Crawford, 'Pests cost \$6.2 million', *Herald Sun*, 11 September 2007, 4)

9.2 Is the current application process effective?

Page 140: The Attorney-General advised the Committee that the Victorian Government Solicitor's Office (VGSO), which acts for the Attorney in vexatious litigant applications, has created 30 files in response to communications about possible vexatious litigants since 1996.⁶¹⁵ The advice did not disclose the outcome of those files but the Committee notes that only seven applications were made under section 21 over the same period.

9.2.3 Allegations of politicization and inconsistency

Page 144: Others claim that Attorneys-General are too willing to apply in some types of cases but not others.⁶³¹ (631 Julian knight, *Submission no.14*, 7. See also Hugh de Kretser, 'Even Julian Knight is entitled to basic human rights', *The Age*, 25 November 2003, 11)

9.3 Is the current position effective?

Page 145: Two individuals, including the one declared vexatious litigant who made a submission to the inquiry, told the committee it was too easy to make a vexatious litigant order in Victoria.⁶³⁴ (634 Darryl O'Bryan, *Submission no 19,1*; Julian Knight, *Submission no.14,8*)

Page 146: ... the Attorney-General advised the Committee that every application over the past 20 years had been successful.⁶⁴⁴

9.4.2 Appeals, applications to revoke declarations and applications for leave

Page 149: Although Julian Knight's successful application for leave to bring proceedings against the Commissioner for Corrections in 2007 attracted substantial publicity⁶⁶⁵ (665 See, for example, Ellen Whinnett, 'Knight gag law', *Herald Sun*, 4 August 2007, 1; Andrea Petrie and Peter Gregory, 'State vow on killer's attempt to contact victims', *The Age*, 2 August 2007, 3; Katie Bice, 'Fury at killer's mail win', *Herald Sun*, 2 August 2007, 7), grants of leave appear to be rare historically.

10.2.4 The Committee's view

Page 159: Section 21 [of the *Supreme Court Act 1986*] also gives the Supreme Court the power to make 'partial orders' similar to extended civil restraint orders.⁶⁹⁹ (699 This power was added in 1996) However, these powers appear to be rarely used. The Committee's research into Victoria's 15 declared vexatious litigants found the Supreme Court made a 'partial order' preventing further proceedings against particular parties in only one case.⁷⁰⁰ (700 *Attorney-General (Vic) v Horvath, Senior* [2001] VSC 269, 165)

10.10.4 Conditions on leave

Page 190: The Committee heard that the Supreme Court has imposed conditions on leave on one occasion in the past.⁸⁴¹ (841 See *Knight v Anderson* [2007] VSC 278, where leave was granted on condition the applicant was legally represented. See also Simon Smith, 'Vexatious litigants and their judicial control - The Victorian experience' (1989) 15(1) *Monash University Law Review* 48, 64)

10.11.3 Periodic reviews

Page 194: Vexatious litigant orders in Victoria are usually drafted so that they remain in force for the remainder of the litigant's life. The Committee is only aware of one case in which the Supreme Court imposed a time limit on an order.⁸⁵⁹ (859 See *Attorney-General (Vic) v Knight* [2004] VSC 407)