

**Submission by Narelle Bedford and Monica Taylor to the Australian  
Productivity Commission in relation to the Draft Report on *Access to Justice  
Arrangements***

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## **Summary of major points**

1. A multidimensional approach to vexatious litigants that focuses on earlier intervention with more graduated responses is the best approach to manage vexatious behaviour and reduce negative impacts.
2. The bar should be lowered in terms of the type of behaviour that attracts a response from the justice system, but without the imposition of severe, general litigation-restricting consequences.
3. Following the experience in Queensland, advantages to a publicly available and searchable register of orders against vexatious litigants outweigh the disadvantages (which with appropriate care can be managed).

## Introductory comments

1. We welcome the Draft Report released by the Productivity Commission on *Access to Justice* and its role in furthering the discussion on this important topic.
2. Our submission responds specifically to one issue raised in the Draft Report, *Information Request 12.6*:

*The Commission seeks feedback on the best way to respond to vexatious litigants and litigation. Could reform that focuses on earlier intervention with more graduated responses to manage vexatious behaviour reduce negative impacts? Should the bar be lowered in terms of the type of behaviour that attracts a response from the justice system? Do jurisdictions need to make available a publicly searchable register of orders against vexatious litigants?*

3. These submissions are intended to be made public.

## Generally about vexatious litigants

4. We refer the Productivity Commission to our research on vexatious litigants in the state of Queensland, which will be published in the forthcoming edition of the *Journal of Judicial Administration*.
5. Queensland is an interesting state in which to conduct research on vexatious litigants, as it has experienced a comparatively high volume of vexatious litigant orders, as noted in the Draft Report in Table 12.1.
6. Our research revealed an additional vexatious litigant order that is not recorded in Table 12.1. Specifically we draw the Productivity Commission's attention to the vexatious litigant order made against Ms Margaret Rockwell in 1966. This order was sought by the Crown Solicitor pursuant to the Qld Supreme Court Rules (Rule LXA).
7. A notable feature of the Qld Supreme Court Rules was the requirement that any vexatious litigant order be published in the *Queensland Government Gazette*. This marked the beginning of the Queensland approach for those deemed to be vexatious to be identified on the public record.
8. We also draw the Productivity Commission's attention to page 386 of the Draft Report and note that Tasmania should also be included in the list of jurisdictions which has passed a specific Act based on the SCAG model bill. The details are the *Vexatious Proceedings Act 2011 (Tas)*. This legislation remains in force.

## Reform focused on earlier intervention with more graduated responses to manage vexatious behaviour

9. As noted in the Draft Report page 386, the current *Vexatious Proceedings Act 2005 (Qld)* does allow for varying types of orders within the power contained in s.6(2). This section permits the Court to make an order staying all or part of any proceeding in Queensland already instituted by the person; and further it also allows an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland.
10. In particular, the power contained in s.6(2)(c) allows for a very broad discretion permitting "any other order the Court considers appropriate in relation to the person".
11. We agree with QPILCH (submission 058) that the "process in Queensland adequately deals with vexatious litigants", however we would argue that despite this

system of varying types of orders a more refined legislative approach would be beneficial, and would provide clearer guidance on a graduated approach.

12. We submit that the system proposed by the Victorian Law Reform Committee in 2008, (modelled on the approach adopted in England and Wales in the *Civil Procedure Rules*) offers a more structured and clearly delineated graduated approach to vexatious litigants.
13. In addition to a more refined legislative approach, we further support the continued funding and operation of the QPILCH Self Representation Service (SRS), offered in the Queensland Supreme and District Courts, the Queensland Civil and Administrative Tribunal and most recently the Federal Courts. There is a commonality of experience in those persons subject to vexatious proceedings orders and the frequency with which they are self-represented.
14. The QPILCH SRS provides a fundamental gate-keeper role whereby self-represented litigants are fully informed, where appropriate, that their matter lacks legal merit, and the potential financial and other consequences of pursuing an unmeritorious proceeding are clearly explained. We are of the view that such a service provides a beneficial impact at the start of the spectrum of litigant behaviour (Draft Report, page 84) before the stage of becoming vexatious is reached. Additionally, the work of the SRS is also consistent with a graduated approach to vexatious behaviours aimed at strengthening early intervention and thereby avoiding the disproportionate use of resources by potentially vexatious litigants.
15. Other measures we have identified to support a graduated, early intervention system include: refined use of court/tribunal rules and procedures; increased use of alternative dispute resolution; and increasing the function and role of registries and their staff.

### **Types of behaviour that should attract a response from the justice system**

16. A more graduated approach to potentially vexatious litigants will necessarily entail that the types of behaviour that attract a response from the justice system be expanded. This would be balanced by a proportionate, graduated response capable of being specifically targeted to the individual and the nature of their litigation. It would aim to ensure that access to justice is neither denied to, nor abused by, litigants.

### **A publicly searchable register of orders against vexatious litigants**

17. The availability of a publicly searchable register of orders against vexatious litigants in Queensland was invaluable in our research and allowed us to identify three phases of responses to vexatious litigants in Queensland. Phase one occurred under the Queensland Supreme Court Rules in which two vexatious litigant orders were made. Phase two occurred under the *Vexatious Litigants Act 1981 (Qld)* under which ten vexatious litigant orders were made. Phase three is under the current act, the *Vexatious Proceedings Act 2005 (Qld)*, under which ten vexatious proceedings orders have been made. Details of the total 22 orders are included in our journal article and it has allowed us to draw tentative conclusions, such as of the ten litigants declared under the current Act, four appear to be from a non-English speaking background and two of the ten were persons with a disability.
18. Provided appropriate care continues to be exercised regarding the litigants and their personal details, we submit this publicly available data will be of benefit not just to researchers, but also registry and court/tribunal staff and decision-makers, as well as to the government and law reform agencies.

## **Conclusion**

19. Through the Draft Report the Australian Productivity Commission has taken an important step towards providing Australians with better access to justice. We look forward to further opportunities for academics, the legal community, civil society and other interested parties contributing to the important work ahead.