

QCAT 2026 Review conducted by the Hon David Thomas

Submission by QCAT President in respect
of Issues paper 1: QCAT's objects and
procedures

Response to Question 4 Vexatious litigants

5 March 2026

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Issues paper one: Vexatious litigants

Consultation question 4

Introduction

1. This is my response to the section in Issues Paper one relating to vexatious litigants.
2. I observe that consultation question 4 (as set out above) raises issues of policy. Matters of policy are ultimately matters for Government, and not something which a current sitting judge would ordinarily express a view about. However, the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) provides that one of the functions of the President is to advise the Minister about how the QCAT Act or the enabling Act could be made more effective,¹ and that the President may do all things necessary or convenient to be done for the performance of the President's functions.²
3. Given that this is a section 240 statutory review, directed to whether or not there should be legislative amendment of the QCAT Act and enabling Acts, I consider it necessary in order to properly discharge my statutory functions to provide responses to the Review which is, of course, the Minister's review.
4. Further, the only response that is coming from QCAT, on QCAT letterhead, is coming from me, and I wish to provide as much assistance as possible to the Review to enable it to make informed recommendations to the Minister.
5. This response is provided with these things in mind.

Summary

6. I consider that there would be benefit in introducing a statutory power that would allow it to declare an individual a vexatious litigant in relation to proceedings before QCAT. The current lack of such a power creates inefficiencies, unnecessary resource consumption, and hampers QCAT's ability to prevent repeated abuse of QCAT's processes. The proposed power should be designed to ensure procedural fairness. It should only be exercisable by QCAT constituted by a legally qualified member.
7. I do not consider that a specific exclusion is needed to ensure that vulnerable individuals are not unfairly disadvantaged. This important objective can be achieved without an express "carve out".

¹ Section 172(3)(b) QCAT Act. See also section 240(2)(d) of the QCAT Act which provides that one of the objects of the statutory review is to investigate any specific issue recommended by the Minister or the president, including, for example, whether any provision of an enabling Act affects the effective operation of the tribunal.

² Section 172(4) QCAT Act.

8. I also consider that there would be benefit in introducing legislative analogues to UCPR Rule 15 (that is, a power for Registry to refer originating process to the Tribunal when the Registrar considers it to be an abuse of the process or frivolous or vexatious) and UCPR Rule 398A (that is, a power for the Tribunal to order that that a party who has made an application in an existing proceeding that is frivolous, vexatious or abuse of process to not make a further application to the Tribunal without leave, and/or to not start a similar proceeding without leave of the Tribunal).

The Tribunal's Experience

9. My observation as President is that a small number of individuals consume a disproportionate share of the Tribunal's time and resources. These individuals:
 - a) Repeatedly file applications that are without merit;
 - b) Re-litigate matters that have already been determined;
 - c) Engage in conduct that is disruptive, abusive, or harassing;
 - d) Use the Tribunal process to pursue personal grievances.
10. Current legislation does not permit the Tribunal to manage this conduct by the most efficient means, namely the power to declare an individual to be a vexatious litigant. The introduction of a vexatious litigant power would assist the Tribunal to protect its processes, meet its objectives of dealing with matters in a way that is just, economical, informal and quick,³ and seek to ensure that its resources are directed toward resolving genuine disputes.
11. Given the significant impact on access to justice of any orders restricting persons from bringing proceedings in the Tribunal:
 - a) determinations about whether to make vexatious litigant orders should only be made by the Tribunal constituted by a legally qualified member. Although extremely serious, I would not think that determination is so legally complex as to mandate a determination by a judicial member. I note that the Review is considering whether or not QCAT should continue to have a judge or judges in its leadership structure.⁴ This question, therefore, is linked to the determination of that issue. Rather than try to deal with the various permutations that might be the outcome of that issues paper, I make the observation that QCAT doesn't have enough judicial members to do the amount of QCAT work which mandates a judicial member: unless that is fully remedied, mandatory constitution of a judicial member for any matter at QCAT must be limited to where it is considered essential for the appropriate delivery of justice. I appreciate that may not be perfect, but it would be impractical to impose a mandatory constitution requirement of a judicial member if there simply isn't enough of them;
 - b) The individual should have the right to be legally represented in the hearing of such a determination, as should any other party who is heard on the determination; and

³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 3.

⁴ Issues Paper 7.

- c) There should be an avenue of appeal from a declaration that a person is a vexatious litigant. On this topic, the following observations may be of some assistance:
 - (i) If it is considered that the power to make the declaration in first instance can only be exercised by a judicial member, then the usual appellate route should apply: that is, there is no appeal to QCATA. There is only an appeal, by leave, to the Court of Appeal;
 - (ii) If it is considered the power to make the declaration can be exercised by a non-judicial but legally qualified member, then there should either be a right of appeal to QCATA followed by an application for leave to appeal to the Court of Appeal, or by way of application for leave to appeal to the Court of Appeal from the decision at first instance. This is a matter in respect of which the Chief Justice and President of the Court of Appeal should be consulted, and I would defer to their views on this issue. In the event it might be helpful, I make the following observations on this topic:
 - a. Experience has shown that the quality of decision-making in QCATA is high;
 - b. From a resourcing perspective, it is likely that a person who is a vexatious litigant is likely to pursue their rights all the way to the Court of Appeal and thus the internal appeal to QCATA may not reduce the number of appeals to the Court of Appeal. On the other hand, if the appeal to QCATA results in a reversal of a declaration, that, of course, will reduce the number of appeals to the Court of Appeal.

Consultation question 4(a)

Existing powers and their limitations

- 12. Under ss 47 and 48 of the QCAT Act, the Tribunal may dismiss or strike out proceedings that are frivolous, vexatious, misconceived, lacking in substance, or if a party to a proceeding is acting in a way that unnecessarily disadvantages another party. These powers are reactive and confined to proceedings already before the Tribunal. They do not permit the Tribunal to restrain the bringing of future proceedings or to manage litigants who bring multiple applications (and commonly, often multiple applications across multiple matters).
- 13. The lack of a broader power to declare a person a vexatious litigant means that the Tribunal may need to engage with multiple individual proceedings brought by the same individual, both originating and interlocutory, that lack merit, and are vexatious.
- 14. It is accepted that this occurs with respect to a fairly small number of litigants; however, proceedings brought by such proceedings consume disproportionate time and resources of both registry and members, and this is to the detriment of the overall efficiency of QCAT and to others waiting for their matters to be heard.

Overview of the powers of Australian Courts and Tribunals to make an order relating to a vexatious litigant

15. Each Australian jurisdiction has established its own statutory framework for managing vexatious litigants. In Queensland, in addition to 'the inherent jurisdiction of a court or tribunal' or powers under other Acts to restrict vexatious proceedings,⁵ vexatious litigation is managed under the *Vexatious Proceedings Act 2005* (Qld). Under this Act, the power to make 'vexatious proceedings orders' is limited to the Supreme Court.⁶
16. The legislation of the Commonwealth and most other States and Territories limits the power to make vexatious proceedings orders to superior courts or certain prescribed inferior courts. The legislation in force in most other Australian jurisdictions does not permit tribunals to make vexatious proceedings orders. The notable exception is Victoria, which allows VCAT to make 'litigation restraint orders' insofar as they relate to VCAT.
17. Although section 4 of the *Vexatious Proceedings Act 2005* (Qld) provides that the Act does not affect the 'inherent jurisdiction' of courts or tribunals, it is unlikely, especially considering the High Court's judgment in *Commonwealth Trading Bank of Australia v Inglis*,⁷ that the Tribunal, as a statutory tribunal, has the inherent power to prevent a vexatious litigant from initiating future proceedings.
18. The table below provides an overview of the statutory framework in place in the Commonwealth and in each State and Territory for managing vexatious litigants.

Table 3: Overview of the statutory framework in place in the Commonwealth and in each State and Territory for managing vexatious litigants.

Jurisdiction	Source of power	Repository of power	Civil/ Administrative Tribunal has power?	Express power to act on own motion?	Express procedural fairness requirement	Can order of court apply to Tribunal?
New South Wales	<i>Vexatious Proceedings Act 2008</i> (NSW)	Supreme Court; ⁸ Land and Environment (limited to	No ¹¹	Yes ¹²	Yes ¹³	Only if made by the

⁵ *Vexatious Proceedings Act 2005* (Qld) s 4.

⁶ *Vexatious Proceedings Act 2005* (Qld) ss 3, 6, schedule.

⁷ *Commonwealth Trading Bank of Australia v Inglis* (1974) 131 CLR 311 (Barwick CJ and McTiernan J).

⁸ *Vexatious Proceedings Act 2008* (NSW) s 8(7).

¹¹ *Vexatious Proceedings Act 2008* (NSW) s 8(4).

¹² *Vexatious Proceedings Act 2008* (NSW) s 8(4).

¹³ *Vexatious Proceedings Act 2008* (NSW) s 8(3).

Jurisdiction	Source of power	Repository of power	Civil/ Administrative Tribunal has power?	Express power to act on own motion?	Express procedural fairness requirement	Can order of court apply to Tribunal?
		proceedings in that court); ⁹ Industrial Court (limited to proceedings in that court) ¹⁰				Supreme Court ¹⁴
Tasmania	<i>Vexatious Proceedings Act 2011</i> (Tas)	Supreme Court ¹⁵	No ¹⁶	Yes ¹⁷	Yes ¹⁸	Yes ¹⁹
Western Australia	<i>Vexatious Proceedings Restriction Act 2002</i> (WA)	Supreme Court; ²⁰ District Court ²¹	No ²²	Yes ²³	Yes ²⁴	Yes ²⁵
South Australia	<i>Supreme Court Act 1935</i> (SA) s 39	Supreme Court ²⁶	No ²⁷	No ²⁸	No ²⁹	Yes ³⁰

⁹ *Vexatious Proceedings Act 2008* (NSW) s 8(8).

¹⁰ *Vexatious Proceedings Act 2008* (NSW) s 8 (8A).

¹⁴ *Vexatious Proceedings Act 2008* (NSW) s 8(7).

¹⁵ *Vexatious Proceedings Act 2011* (Tas) ss 3, 6.

¹⁶ *Vexatious Proceedings Act 2011* (Tas) ss 5, 6(3).

¹⁷ *Vexatious Proceedings Act 2011* (Tas) ss 5, 6(3).

¹⁸ *Vexatious Proceedings Act 2011* (Tas) s 6(4).

¹⁹ *Vexatious Proceedings Act 2011* (Tas) s 6(2).

²⁰ *Vexatious Proceedings Restriction Act 2002* (WA) ss 3, 4(1).

²¹ *Vexatious Proceedings Restriction Act 2002* (WA) ss 3, 4(1).

²² *Vexatious Proceedings Restriction Act 2002* (WA) ss 3, 4(1).

²³ *Vexatious Proceedings Restriction Act 2002* (WA) ss 3, 4(1).

²⁴ *Vexatious Proceedings Restriction Act 2002* (WA) s 4(3).

²⁵ *Vexatious Proceedings Restriction Act 2002* (WA) ss 3, 4.

²⁶ *Supreme Court Act 1935* (SA) s39(6).

²⁷ *Supreme Court Act 1935* (SA) s 39(1).

²⁸ *Supreme Court Act 1935* (SA) s 39(1).

²⁹ *Supreme Court Act 1935* (SA) s 39.

³⁰ *Supreme Court Act 1935* (SA) s 39(1) & (6); *Supreme Court Regulations 2018* (SA) s 4.

Jurisdiction	Source of power	Repository of power	Civil/ Administrative Tribunal has power?	Express power to act on own motion?	Express procedural fairness requirement	Can order of court apply to Tribunal?
Victoria	<i>Vexatious Proceedings Act 2014</i> (Vic)	Supreme Court; Country Court; ³¹ Magistrates' Court; ³² Children's Court; ³³ VCAT (must be constituted by a member who is an Australian lawyer) ³⁴	Yes ³⁵	Yes ³⁶	Yes ³⁷	Yes ³⁸
Queensland	<i>Vexatious Proceedings Act 2005</i> (Qld)	Supreme Court ³⁹	No ⁴⁰	Yes ⁴¹	Yes ⁴²	Yes ⁴³
Northern Territory	<i>Vexatious Proceedings Act 2006</i> (NT)	Supreme Court ⁴⁴	No ⁴⁵	Yes ⁴⁶	Yes ⁴⁷	Yes ⁴⁸

³¹ *Vexatious Proceedings Act 2014* (Vic) ss 3, 11(1), 17(1), 9.

³² *Vexatious Proceedings Act 2014* (Vic) ss 3, 11(1), 17(1), 9.

³³ *Vexatious Proceedings Act 2014* (Vic) ss 3, 11(1), 17(1), 9.

³⁴ *Vexatious Proceedings Act 2014* (Vic) ss 11(1), 17(1), 9.

³⁵ *Vexatious Proceedings Act 2014* (Vic) ss 10(1), 11(4), 16(1), 17(4).

³⁶ *Vexatious Proceedings Act 2014* (Vic) ss 10(1), 11(4), 16(1), 17(4).

³⁷ *Vexatious Proceedings Act 2014* (Vic) ss 10(1), 11(4), 16(1), 17(4).

³⁸ *Vexatious Proceedings Act 2014* (Vic) ss 20(1), 30(1).

³⁹ *Vexatious Proceedings Act 2005* (Qld) ss 3, 6, schedule.

⁴⁰ *Vexatious Proceedings Act 2005* (Qld) ss 5, 6.

⁴¹ *Vexatious Proceedings Act 2005* (Qld) ss 5, 6.

⁴² *Vexatious Proceedings Act 2005* (Qld) s 6(4).

⁴³ *Vexatious Proceedings Act 2005* (Qld) ss 3, 6(2), schedule.

⁴⁴ *Vexatious Proceedings Act 2006* (NT) ss 2, 7.

⁴⁵ *Vexatious Proceedings Act 2006* (NT) s 7.

⁴⁶ *Vexatious Proceedings Act 2006* (NT) s 7(6).

⁴⁷ *Vexatious Proceedings Act 2006* (NT) s 7(6).

⁴⁸ *Vexatious Proceedings Act 2006* (NT) ss 3, 7(3).

Jurisdiction	Source of power	Repository of power	Civil/ Administrative Tribunal has power?	Express power to act on own motion?	Express procedural fairness requirement	Can order of court apply to Tribunal?
Australian Capital Territory	<i>Supreme Court Act 1933 (ACT)</i> s 67A	Supreme Court ⁴⁹	No ⁵⁰	No ⁵¹	No ⁵²	Yes ⁵³
Commonwealth	<i>Judiciary Act 1903</i> (Cth) pt XAB <i>Federal Court of Australia Act 1976</i> (Cth) pt VAAA <i>Federal Circuit and Family Court of Australia Act 2021</i> (Cth) pt 8	High Court of Australia ⁵⁴ Federal Court of Australia ⁵⁵ Federal Circuit and Family Court of Australia ⁵⁶	No ⁵⁷	Yes ⁵⁸	Yes ⁵⁹	No ⁶⁰

19. Queensland's *Vexatious Proceedings Act 2005* is modelled on the Model Vexatious Proceedings Bill 2004 (the '**Model Bill**'). The Model Bill was the outcome of a process initiated by Queensland with the Standing Committee of Attorneys-General to develop a nationally consistent approach to vexatious litigant legislation.⁶¹ A working party of officers from all States and Territories and the Commonwealth considered options and developed the Model Bill.⁶² Some provisions of the Model Bill were also adopted by the

⁴⁹ *Supreme Court Act 1933 (ACT)* s 67A.

⁵⁰ *Supreme Court Act 1933 (ACT)* s 67A(2).

⁵¹ *Supreme Court Act 1933 (ACT)* s 67A(2).

⁵² *Supreme Court Act 1933 (ACT)* s 67A(2).

⁵³ *Supreme Court Act 1933 (ACT)* s 67A(1).

⁵⁴ *Judiciary Act 1903* (Cth) s 77RN(2).

⁵⁵ *Federal Court of Australia Act 1976* (Cth) s 37AO(2).

⁵⁶ *Federal Circuit and Family Court of Australia Act 2021* (Cth) s 239.

⁵⁷ *Judiciary Act 1903* (Cth) s 77RN; *Federal Court of Australia Act 1976* (Cth) s 37AO; *Federal Circuit and Family Court of Australia Act 2021* (Cth) s 239.

⁵⁸ *Judiciary Act 1903* (Cth) s 77RN(3); *Federal Court of Australia Act 1976* (Cth) s 37AO(3); *Federal Circuit and Family Court of Australia Act 2021* (Cth) s 239(4).

⁵⁹ *Judiciary Act 1903* (Cth) s 77RN(4); *Federal Court of Australia Act 1976* (Cth) s 37AO(4); *Federal Circuit and Family Court of Australia Act 2021* (Cth) s 239(5).

⁶⁰ *Judiciary Act 1903* (Cth) s 77RN; *Federal Court of Australia Act 1976* (Cth) s 37AO; *Federal Circuit and Family Court of Australia Act 2021* (Cth) s 239.

⁶¹ Explanatory Notes, *Vexatious Proceedings Bill 2005* (Qld) p 2.

⁶² Explanatory Notes, *Vexatious Proceedings Bill 2005* (Qld) p 2.

parliaments of New South Wales,⁶³ Tasmania,⁶⁴ the Northern Territory,⁶⁵ and the Commonwealth.⁶⁶

20. The approach taken by the Parliament of Victoria differs substantially from that taken in the Model Bill. While the Model Bill intentionally reserved the power to make vexatious litigant orders to the 'senior court of the jurisdiction',⁶⁷ the Victorian *Vexatious Proceedings Act 2014* (Vic) permits all Victorian courts and VCAT to make 'litigation restraint orders'. The Victorian Act was the product of an inquiry undertaken by the Law Reform Committee (**LRC**) of the Parliament of Victoria in 2008.⁶⁸
21. The report of the Victorian Parliament's LRC followed its 'Inquiry into Vexatious Litigants' considered whether the power to make vexatious litigant orders should be limited to the Supreme Court.⁶⁹ The LRC concluded that:

*The Committee considers the power to make limited orders should be available to all courts and VCAT. The Committee believes the power to make extended orders should also be available to all courts and VCAT but, with the exception of the Supreme Court, should be confined to the head of jurisdiction and should only restrain litigation in the jurisdiction where the order is made. The Supreme Court should be the only court with the power to make general orders, given their serious consequences for access to justice and individual rights.*⁷⁰

22. The LRC recommended that limited orders would prohibit applications in the existing litigation without leave, and that extended orders would prohibit the person from continuing or bringing any proceedings against the persons named in the order or about the issues named in the order, and would only prohibit proceedings in the court or tribunal making the order.⁷¹ General orders, on the other hand, would prohibit the person from continuing or bringing any proceeding in any Victorian court or tribunal without leave.⁷²

⁶³ Explanatory Notes, Vexatious Proceedings Bill 2008 (NSW) p 2.

⁶⁴ Fact Sheet, Vexatious Proceedings Bill 2011 (Tas).

⁶⁵ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 30 August 2006 , p 2980 (Dr Toyne (Minister for Justice and Attorney-General)).

⁶⁶ Explanatory Memorandum, Access to Justice (Federal Jurisdiction) Amendment Bill (Cth) p 1.

⁶⁷ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 30 August 2006, p 2980 (Dr Toyne (Minister for Justice and Attorney-General)).

⁶⁸ Explanatory Memorandum, Vexatious Proceedings Bill 2014 (Vic) p 1; Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008).

⁶⁹ Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008) pp 168-169.

⁷⁰ Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008) p 168.

⁷¹ Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008) pp xiii-xiv.

⁷² Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008) p xiv.

23. I consider that it would benefit from a power to make orders similar in nature to the limited and extended orders proposed by the Victorian Parliament's LRC and ultimately adopted in the Victorian Act.
24. If the workload of the President of QCAT continues to be extremely demanding,⁷³ it would not be practical to permit only the head of jurisdiction to make vexatious litigant declarations. As set out above, the issues raised in these declarations do not appear to raise issues of such complexity as to require only a judge to hear and determine them, much less only the Head of Jurisdictions. I wholly accept that minds may differ on this (and I note that I will not be President post 1 August 2026). I also note that it is possible that the role of the President in a future QCAT will not involve having to run and sit on the legal practitioner disciplinary list, and thus some capacity to hear and determine other matters may become available.

Proposed Model for QCAT

25. The right to seek legal redress in a court or tribunal is a cornerstone of democratic societies governed by the rule of law.⁷⁴ Any statutory power conferred upon the Tribunal should be consistent with that principle.
26. I propose that it be conferred with statutory power to:
 - a) Declare a person to be a vexatious litigant in relation to QCAT proceedings;
 - b) Order that all or part of any proceeding already instituted by the person in QCAT be permanently stayed;
 - c) Prohibit the person from instituting proceedings, or proceedings of a particular type in QCAT, without leave of QCAT, with the scope to tailor the order, including limiting it to particular jurisdictions (for example, the Tribunal's review jurisdiction).
27. The following entities should be able to initiate a proceeding for a vexatious litigant order:
 - a) The Attorney-General;
 - b) The Crown Solicitor;
 - c) The Principal Registrar;
 - d) A party to proceedings affected by vexatious conduct;
 - e) The Tribunal, on its own initiative.

⁷³ Which seems likely whether or not the legal practitioner disciplinary jurisdiction becomes the sole remit of the Supreme Court.

⁷⁴ Emma Fitch and Patricia Easteal, 'Vexatious litigation in family law and coercive control: Ways to improve legal remedies and better protect victims' (2017) 7 Fam L Rev 103, 103; citing Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008) pp 1–6, 111–137, 139–152.

Consultation question 4(b)

28. There should not be an express exclusion for “vulnerable persons”, however that might be defined. Vulnerability and vexatiousness are not mutually exclusive. A person may be vulnerable and yet persistently engage in litigation that is vexatious or without merit. Conversely, a person may be vulnerable and merely persistent, without being vexatious.
29. The Victorian LRC considered the characteristics of individual vexatious litigants, including vulnerable traits.⁷⁵ The LRC concluded that there is no single reason why people become vexatious, and it was unable to make any link between, for example, mental health issues and vexatious litigants.⁷⁶ A member who is considering whether or not to declare a litigant vexatious will take into account any relevant vulnerable traits in determining whether or not the person is vulnerable, and not vexatious, but merely persistent; or whether they are both. Some will merely be vexatious. Some will be neither.
30. If, contrary to my view, the view is taken that there needs to be an express statement in the legislation in respect of vulnerable litigants, then it will be necessary for those drafting the legislation to:
 - a) In a very disciplined way, identify the specific purpose of such an express statement, that is, identify the precise mischief that such an express statement is sought to address (noting that the Victorian LRC was not able to make a link between mental health issues and vexatious litigants);
 - b) Include a very precise definition of “vulnerable litigant” in light of the identification of that purpose; and
 - c) Articulate a statutory test which is directly responsive to the purpose.
31. A general and unfocused exception or test will just be problematic, and wasteful of litigant and Tribunal time and resources.

Summary in respect of vexatious litigant declaration power

32. The ability of QCAT to meet the objects of the QCAT Act would be enhanced by a statutory power to:
 - a) Declare a person to be a vexatious litigant in relation to QCAT proceedings;
 - b) Order that all or part of any proceeding already instituted by the person in QCAT be permanently stayed;
 - c) Prohibit the person from instituting proceedings, or proceedings of a particular type in QCAT, without leave of QCAT;

⁷⁵ Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008) pp 58-69.

⁷⁶ Law Reform Committee (LRC), Parliament of Victoria, *Inquiry into Vexatious Litigants Final Report* (2008) p 67.

- d) Tailor the scope of the order, including limiting it to particular jurisdictions (for example, the Tribunal's review jurisdiction).
- 33. It would seem prudent that the following entities should be able to initiate a proceeding for a vexatious litigant order:
 - a) The Attorney-General;
 - b) The Crown Solicitor;
 - c) The Principal Registrar;
 - d) A party to proceedings affected by vexatious conduct;
 - e) The Tribunal, on its own initiative.
- 34. The statutory power should include which parallels that in section 6 of the *Vexatious Proceedings Act 1995* (Qld).⁷⁷
- 35. The person who is at risk of having a vexatious litigant order being made should have the right to be heard and the right to be legally represented. There should be an avenue of appeal, with the right to representation without leave.
- 36. There need not be an express exclusion for 'vulnerable persons'. Vulnerable traits would, of course, be considered in determining whether a person is actually vexatious.

Introducing legislative analogues to UCPR Rules 15 and 398A

- 37. I also consider that there would be benefit in introducing legislative analogues to UCPR Rule 15 (that is, a power for Registry to refer originating process to the Tribunal when the Registrar considers it to be an abuse of the process or frivolous or vexatious) and UCPR Rule 398A (that is, a power for the Tribunal to order that a party who has made an application in an existing proceeding that is frivolous, vexatious or abuse of process to not make a further application to the Tribunal without leave, and/or to not start a similar proceeding without leave of the Tribunal.)
- 38. Introduction of legislative analogues would assist QCAT in meeting its statutory objects. It will be a matter for legislative drafters as to whether or not these should be provisions in the QCAT Act or as subordinate legislation. Given the existence of sections 47 to 49, and section 35 of the QCAT Act, legislative analogues of those two UCPR's might be well placed in the QCAT Act as part of the legislative framework for the:
 - a) Tribunal to take action where matters are an abuse of process, vexatious or frivolous (in the case of section 398A); and
 - b) The Principal Registrar to take action where an application is not in keeping with the expectations of the law.

⁷⁷ Section 6 of the *Vexatious Proceedings Act 1995* (Qld) provides that:

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.

Conclusion

39. I hope this response is of some assistance to the Review in carrying out its remit. As always, please do not hesitate to contact me should you have any queries or if I am able to be of assistance.



The Honourable Justice Kerri Mellifont

Supreme Court of Queensland

President of the Queensland Civil and Administrative Tribunal