

Authorised Version
Vexatious Proceedings Act 2014
No. 42 of 2014

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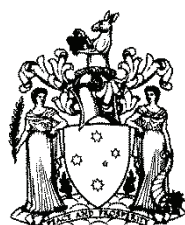
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Authorised Version



Victoria

Vexatious Proceedings Act 2014[†]

No. 42 of 2014

[Assented to 17 June 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to reform and consolidate the law relating to vexatious proceedings in courts and tribunals in a way that—

- (a) balances individual rights of access to the courts with the public interest in an efficient and effective justice system; and

- (b) promotes uniformity with other jurisdictions in the management and prevention of vexatious behaviour.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 31 October 2014, it comes into operation on that day.

3 Definitions

In this Act—

acting in concert has the meaning given by section 4;

acting in concert order means an order made—

- (a) by the Supreme Court, the County Court, the Magistrates' Court or VCAT under section 35; or
- (b) in relation to intervention order legislation, by the Magistrates' Court or the Children's Court under section 36;

appeal restriction order means an order made—

- (a) by the Supreme Court under section 37; or
- (b) by the County Court, the Magistrates' Court or VCAT under section 38; or
- (c) in relation to intervention order legislation, by the Magistrates' Court or the Children's Court under section 39;

application for leave to proceed means—

- (a) an application under section 50 by a person subject to a limited litigation restraint order for leave to make or

continue an interlocutory application in a proceeding; or

- (b) an application under section 52 by a person subject to an extended litigation restraint order for leave to commence or continue a proceeding; or
- (c) an application under section 54 by a person subject to a general litigation restraint order for leave to commence or continue a proceeding;

Australian court or tribunal means—

- (a) a Victorian court or tribunal; or
- (b) a court or tribunal of the Commonwealth or of another State or a Territory;

child means a person who is under the age of 18 years;

Court means the following courts—

- (a) the Supreme Court;
- (b) the County Court;
- (c) the Magistrates' Court;
- (d) in relation to an order under this Act that relates to intervention order legislation, the Children's Court;

extended litigation restraint order means an order made—

- (a) by the Supreme Court, the County Court, the Magistrates' Court or VCAT under section 17; or
- (b) in relation to intervention order legislation, by the Magistrates' Court or the Children's Court under section 19;

general litigation restraint order means an order made under section 29;

interlocutory application has the meaning given by section 5;

intervention order legislation means—

- (a) the **Crimes (Family Violence) Act 1987** as in force immediately before its repeal; and
- (b) the **Family Violence Protection Act 2008**; and
- (c) the **Personal Safety Intervention Orders Act 2010**; and
- (d) the **Stalking Intervention Orders Act 2008** as in force immediately before its repeal;

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

limited litigation restraint order means an order made under section 11;

litigation restraint order means any of the following orders—

- (a) an extended litigation restraint order;
- (b) a general litigation restraint order;
- (c) a limited litigation restraint order;

parent, of a child, includes—

- (a) a person who has responsibility for the long-term welfare of the child and has, in relation to the child, all the parental powers, rights and duties that are vested by law or custom in the guardian of a child; and

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- (b) a person with whom the child normally or regularly resides;

proceeding means any matter in an Australian court or tribunal, whether civil or criminal, including—

- (a) any cause, matter, action, suit, proceeding, trial, complaint or inquiry of any kind within the jurisdiction of an Australian court or tribunal;
- (b) any proceeding (including any interlocutory application) taken in connection with or incidental to a proceeding before an Australian court or tribunal;
- (c) any appeal, review or other challenge, including an application for judicial review or an application for leave to appeal.

variation or revocation application prevention order means an order made—

- (a) by the Supreme Court, the County Court, the Magistrates' Court or VCAT under section 74(1); or
- (b) in relation to intervention order legislation, by the Magistrates' Court or the Children's Court under section 74(2);

vexatious application includes the following—

- (a) an interlocutory application that is an abuse of the process of a court or tribunal;
- (b) an interlocutory application made to harass or annoy, to cause delay or detriment, or for another wrongful purpose;

- (c) an interlocutory application made or pursued without reasonable ground;
- (d) an interlocutory application pursued in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose;

vexatious proceeding includes the following—

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

vexatious proceeding order means any of the following orders made by an Australian court or tribunal—

- (a) an order that a proceeding be stayed or dismissed for being vexatious;
- (b) an order that a person commencing or conducting a proceeding is a vexatious litigant;
- (c) any other order that requires the person subject to the order to seek leave of an Australian court or tribunal before commencing or continuing a proceeding;

Victorian court or tribunal means any of the following—

- (a) the Supreme Court;
- (b) the County Court;
- (c) the Magistrates' Court;
- (d) the Children's Court;
- (e) VCAT;
- (f) VOCAT;

VOCAT means the Victims of Crime Assistance Tribunal established by the **Victims of Crime Assistance Act 1996**.

4 Meaning of *acting in concert*

- (1) Subject to subsection (2), in this Act, a person is ***acting in concert*** with another person if the first mentioned person is—
 - (a) acting on behalf of the other person; or
 - (b) acting for the predominant benefit of the other person; or
 - (c) acting on the instructions of the other person; or
 - (d) acting in collusion with the other person.
- (2) A person who makes an interlocutory application or commences and conducts a proceeding on behalf of a person is not acting in concert with that person if the first mentioned person is—
 - (a) a legal practitioner acting for the person; or
 - (b) a litigation guardian of the person; or
 - (c) a professional advocate within the meaning of section 62(8) of the **Victorian Civil and Administrative Tribunal Act 1998**; or

- (d) any other person authorised or required by law to act on behalf of the person.

Example

Persons who may be authorised or required by law to act on behalf of a person include insurers conducting proceedings under a right of subrogation, administrators, guardians, liquidators, receivers and any other person who has a legal right or obligation to represent the person.

5 Meaning of *interlocutory application*

- (1) In this Act, an *interlocutory application* means any process by which an interlocutory proceeding is commenced in an Australian court or tribunal, including a subpoena.
- (2) Despite subsection (1), the following are not interlocutory applications for the purposes of this Act—
- (a) an application under the **Family Violence Protection Act 2008** in respect of which a court makes—
- (i) an interim order under section 53 or 101 of that Act; or
- (ii) an interim extension order under section 107 of that Act; or
- (b) an application under the **Personal Safety Intervention Orders Act 2010** in respect of which a court makes—
- (i) an interim order under section 35 or 81 of that Act; or
- (ii) an interim extension order under section 84 of that Act.

6 Application of Act

- (1) This Act applies to all civil proceedings and all criminal proceedings in a Victorian court or tribunal.

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- (2) The powers conferred on a Victorian court or tribunal by this Act are additional to the powers of a Victorian court or tribunal to control its own proceedings.

7 Act prevails to extent of inconsistency

Subject to section 8, to the extent of any inconsistency, this Act prevails over—

- (a) any statutory jurisdiction of a Victorian court or tribunal; or
- (b) any powers of a Victorian court or tribunal arising or derived from the common law; or
- (c) any powers of a Victorian court or tribunal arising or derived under any other Act (including any Commonwealth Act), rule of court, practice note or practice direction.

8 Act does not limit certain other jurisdictions

Nothing in this Act limits—

- (a) in the case of the Supreme Court, the Court's inherent jurisdiction or implied jurisdiction; or
- (b) in the case of a Court other than the Supreme Court, the Court's implied jurisdiction.

9 Constitution of VCAT

When exercising a power under this Act, VCAT must be constituted by a member who is an Australian lawyer within the meaning of the **Legal Profession Act 2004**.

PART 2—LIMITED LITIGATION RESTRAINT ORDERS

10 Applying for limited litigation restraint order

- (1) Subject to subsection (2), any of the following persons may apply to a Court or VCAT for a limited litigation restraint order against a person who is a party to a proceeding in that Court or in VCAT (as the case requires)—
- (a) the Attorney-General;
 - (b) if the person has made a vexatious application against another person, that other person;
 - (c) a person who has a sufficient interest in the matter.

Example

A person who is a party to a proceeding and who is not the person against whom a vexatious application has been made may be a person who has a sufficient interest in the matter.

- (2) A person referred to in subsection (1)(b) or (c) must not apply for a limited litigation restraint order against a person who is a party to a proceeding—
- (a) without leave of the Court in which the proceeding is being heard; or
 - (b) if the proceeding is being heard in VCAT, without leave of VCAT.
- (3) A Court or VCAT may grant leave to apply for a limited litigation restraint order if the Court or VCAT is satisfied that—
- (a) there is merit in the application; and
 - (b) the making of the application would not be an abuse of process.

11 Court or VCAT may make limited litigation restraint order

- (1) A Court or VCAT may make a limited litigation restraint order against a person who is a party to a proceeding if the Court or VCAT is satisfied that—
- (a) the person has made 2 or more interlocutory applications in the proceeding; and
 - (b) the interlocutory applications are vexatious applications.
- (2) When making an order under subsection (1), a Court or VCAT may in its discretion take into account any matter it considers relevant, including but not limited to the following—
- (a) any interlocutory application made by the person, or an entity controlled by the person, in any Australian court or tribunal;
 - (b) the existence of any order made by an Australian court or tribunal against the person or an entity controlled by the person, including—
 - (i) a litigation restraint order; or
 - (ii) an acting in concert order; or
 - (iii) a vexatious proceeding order; or
 - (iv) an order striking out a vexatious application;
 - (c) any other matter relating to the way in which the person conducts or has conducted litigation.
- (3) A Court or VCAT may take into account a matter referred to in subsection (2) that relates to an interlocutory application made or a proceeding commenced or conducted before, on or after the commencement of this section.

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- (4) A Court or VCAT may make a limited litigation restraint order—
- (a) on its own motion; or
 - (b) on an application under section 10.

12 Content of limited litigation restraint order

- (1) A limited litigation restraint order may direct that the person must not, without leave of the Court or VCAT (as the case requires), do either or both of the following—
- (a) make an interlocutory application or specified type of interlocutory application in the proceeding;
 - (b) continue an interlocutory application or specified type of interlocutory application in the proceeding.
- (2) A limited litigation restraint order may include any other direction or order in relation to the proceeding that the Court or VCAT considers appropriate.
- (3) Without limiting subsection (2), the Court or VCAT may direct that the person who is subject to the limited litigation restraint order may make or continue a specified type of interlocutory application in the proceeding.

13 Effect of limited litigation restraint order

On the making of a limited litigation restraint order, subject to the terms of the order—

- (a) an interlocutory application in the proceeding to which the order relates is stayed; and
- (b) an interlocutory application that is made in contravention of the order is of no effect.

14 Limited litigation restraint order does not affect certain applications or proceedings

A limited litigation restraint order made against a person in respect of a proceeding does not affect the person's right—

- (a) to make or continue an interlocutory application in another proceeding in a Victorian court or tribunal; or
- (b) to commence or continue another proceeding in a Victorian court or tribunal.

15 Duration of limited litigation restraint order

Unless a Court or VCAT otherwise orders, a limited litigation restraint order remains in force for the duration of the proceeding to which the order relates.

PART 3—EXTENDED LITIGATION RESTRAINT ORDERS

16 Application for extended litigation restraint order

- (1) Subject to subsection (2), any of the following persons may apply to a Court or VCAT for an extended litigation restraint order against a person—
 - (a) the Attorney-General;
 - (b) if the person has commenced or conducted a vexatious proceeding against another person, that other person;
 - (c) a person with a sufficient interest in the matter.
- (2) A person referred to in subsection (1)(b) or (c) must not apply for an extended litigation restraint order—
 - (a) without leave of the Court of the jurisdiction in which the order is sought; or
 - (b) if the order is sought in respect of proceedings in VCAT, without leave of VCAT.
- (3) A Court or VCAT may grant leave to apply for an extended litigation restraint order if the Court or VCAT is satisfied that—
 - (a) there is merit in the application; and
 - (b) the making of the application would not be an abuse of process.

17 Court or VCAT may make extended litigation restraint order

- (1) A Court or VCAT may make an extended litigation restraint order against a person if the Court or VCAT is satisfied that the person has frequently commenced or conducted vexatious proceedings—

- (a) against a person or other entity; or
- (b) in relation to a matter.

Note

The Magistrates' Court may also make an extended litigation restraint order that relates to intervention order legislation under section 19.

- (2) In determining whether it is satisfied of the matters specified in subsection (1), a Court or VCAT may take into account any matter it considers relevant, including but not limited to any of the following—
 - (a) a proceeding commenced or conducted by the person, or an entity controlled by the person, in any Australian court or tribunal;
 - (b) the existence of an order made by an Australian court or tribunal against the person, or an entity controlled by the person, including—
 - (i) a litigation restraint order; or
 - (ii) an acting in concert order; or
 - (iii) a vexatious proceeding order;
 - (c) any other matter relating to the way in which the person conducts or has conducted litigation.
- (3) A Court or VCAT may take into account a matter referred to in subsection (2) that relates to a proceeding commenced or conducted before, on or after the commencement of this section.
- (4) A Court or VCAT may make an extended litigation restraint order—
 - (a) on its own motion; or
 - (b) on an application under section 16.

**18 Application for extended litigation restraint order—
intervention order legislation**

- (1) Subject to subsection (2), any of the following persons may apply to the Magistrates' Court or the Children's Court for an extended litigation restraint order that relates to intervention order legislation against a person—
- (a) the Attorney-General;
 - (b) if the person has commenced or conducted a vexatious proceeding under intervention order legislation against another person, that other person;
 - (c) a person with a sufficient interest in the matter.

Example

For the purposes of an extended litigation restraint order that relates to intervention order legislation, a person with a sufficient interest in the matter may include a police officer or a guardian or family member who seeks to apply for an intervention order under intervention order legislation on behalf of a person.

- (2) A person referred to in subsection (1)(b) or (c) must not apply for an extended litigation restraint order without leave of the Magistrates' Court or the Children's Court (as the case requires).
- (3) The Children's Court or the Magistrates' Court may grant leave to apply for an extended litigation restraint order that relates to intervention order legislation if the Court is satisfied that—
- (a) there is merit in the application; and
 - (b) the making of the application would not be an abuse of process.

19 Magistrates' Court or Children's Court may make extended litigation restraint order—intervention order legislation

- (1) The Magistrates' Court or the Children's Court may make an extended litigation restraint order that relates to intervention order legislation against a person if the court is satisfied that the person has frequently commenced or conducted vexatious proceedings under intervention order legislation—
 - (a) against a person; or
 - (b) in relation to a matter.
- (2) In determining whether it is satisfied of the matters specified in subsection (1), the Magistrates' Court or the Children's Court may take into account any matter it considers relevant.
- (3) The Magistrates' Court or the Children's Court may make an extended litigation restraint order that relates to intervention order legislation—
 - (a) on its own motion; or
 - (b) on an application under section 18.

Note

See section 154 of the **Family Violence Protection Act 2008** or section 111 of the **Personal Safety Intervention Orders Act 2010** in relation to costs for a proceeding for an order made under this section.

20 Content of extended litigation restraint order made by Supreme Court

- (1) An extended litigation restraint order made by the Supreme Court against a person may direct that the person must not do either or both of the following for the period specified by the Supreme Court—
 - (a) continue a proceeding in a Victorian court or tribunal against a person or other entity

named in the order, or in respect of a matter described in the order, without leave of—

- (i) the Supreme Court; or
 - (ii) the Victorian court or tribunal in which the proceeding is being heard;
- (b) commence a proceeding in a Victorian court or tribunal against a person or other entity named in the order, or in respect of a matter described in the order, without leave of—
- (i) the Supreme Court; or
 - (ii) the Victorian court or tribunal in which the proceeding is to be commenced.

- (2) An extended litigation restraint order made by the Supreme Court may include any other direction or order that the Supreme Court considers appropriate.
- (3) Without limiting subsection (2), the Supreme Court may direct that the person who is subject to the order may commence or continue a specified proceeding in a Victorian court or tribunal.

21 Content of extended litigation restraint order made by County Court

- (1) An extended litigation restraint order made by the County Court against a person may direct that the person must not, without leave of the County Court, do either or both of the following for the period specified by the County Court—
- (a) continue a proceeding in the County Court against a person or other entity named in the order or in respect of a matter described in the order;

-
- (b) commence a proceeding in the County Court against a person or other entity named in the order or in respect of a matter described in the order.
- (2) An extended litigation restraint order made by the County Court may include any other direction or order in relation to a proceeding or the commencement of a proceeding in the County Court that the court considers appropriate.
- (3) Without limiting subsection (2), the County Court may direct that the person who is subject to the order may commence or continue a specified proceeding in the County Court.

22 Content of extended litigation restraint order made by Magistrates' Court

- (1) An extended litigation restraint order made by the Magistrates' Court against a person under section 17 may direct that the person must not, without leave of the Magistrates' Court, do either or both of the following for the period specified by the Magistrates' Court—
- (a) continue a proceeding in the Magistrates' Court against a person or other entity named in the order or in respect of a matter described in the order;
- (b) commence a proceeding in the Magistrates' Court against a person or other entity named in the order or in respect of a matter described in the order.
- (2) An extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court against a person under section 19 may direct that the person must not, without leave of the Magistrates' Court, do either or both of the following for the period specified by the Magistrates' Court—

- (a) continue a proceeding in the Magistrates' Court or the Children's Court under intervention order legislation—
 - (i) against a person protected by the extended litigation restraint order and, if the person is a parent of a child, his or her child; or
 - (ii) in respect of a matter described in the order;
 - (b) commence a proceeding in the Magistrates' Court or the Children's Court under intervention order legislation—
 - (i) against a person protected by the extended litigation restraint order and, if the person is a parent of a child, his or her child; or
 - (ii) in respect of a matter described in the order.
- (3) An extended litigation restraint order made by the Magistrates' Court may include any other direction or order that the Magistrates' Court considers appropriate in relation to a proceeding or the commencement of a proceeding—
- (a) in the case of an extended litigation restraint order made under section 17, in the Magistrates' Court; or
 - (b) in the case of an extended litigation restraint order that relates to intervention order legislation made under section 19, in the Magistrates' Court or the Children's Court.
- (4) Without limiting subsection (3), the Magistrates' Court may direct that the person who is subject to the order may commence or continue a specified proceeding—

- (a) in the case of an extended litigation restraint order made under section 17, in the Magistrates' Court; or
- (b) in the case of an extended litigation restraint order that relates to intervention order legislation made under section 19, in the Magistrates' Court or the Children's Court.

23 Content of extended litigation restraint order made by Children's Court

- (1) An extended litigation restraint order that relates to intervention order legislation made by the Children's Court against a person may direct that the person must not, without leave of the Children's Court, do either or both of the following for the period specified by the Children's Court—
 - (a) continue a proceeding in the Magistrates' Court or the Children's Court under intervention order legislation—
 - (i) against a person protected by the extended litigation restraint order and, if the person is a parent of a child, his or her child; or
 - (ii) in respect of a matter described in the order;
 - (b) commence a proceeding in the Magistrates' Court or the Children's Court under intervention order legislation—
 - (i) against a person protected by the extended litigation restraint order and, if the person is a parent of a child, his or her child; or
 - (ii) in respect of a matter described in the order.

- (2) An extended litigation restraint order referred to in subsection (1) may include any other direction or order in relation to a proceeding or the commencement of a proceeding that relates to intervention order legislation that the Children's Court considers appropriate.
- (3) Without limiting subsection (2), the Children's Court may direct that the person who is subject to the extended litigation restraint order may commence or continue a specified proceeding in the Magistrates' Court or the Children's Court under intervention order legislation.

24 Content of extended litigation restraint order made by VCAT

- (1) An extended litigation restraint order made by VCAT against a person may direct that the person must not, without leave of VCAT, do either or both of the following for the period specified by VCAT—
 - (a) continue a proceeding in VCAT against a person or other entity named in the order or in respect of a matter described in the order;
 - (b) commence a proceeding in VCAT against a person or other entity named in the order or in respect of a matter described in the order.
- (2) An extended litigation restraint order made by VCAT may include any other direction or order in relation to a proceeding or the commencement of a proceeding in VCAT that VCAT considers appropriate.
- (3) Without limiting subsection (2), VCAT may direct that the person who is subject to the order may commence or continue a specified proceeding in VCAT.

25 Effect of extended litigation restraint order on proceeding

On the making of an extended litigation restraint order, subject to the terms of the order—

- (a) a proceeding to which the order relates is stayed; and
- (b) a proceeding that is commenced in contravention of the order is of no effect.

26 Extended litigation restraint order does not affect certain proceedings

- (1) An extended litigation restraint order made by the Supreme Court does not affect a person's right to commence or continue a proceeding in the relevant jurisdiction against a person or other entity, or in respect of a matter, that is not specified in the order.
- (2) An extended litigation restraint order made by the County Court or VCAT does not affect a person's right to commence or continue a proceeding in another Victorian court or tribunal that is not the jurisdiction that made the extended litigation restraint order.
- (3) Subject to subsection (4), an extended litigation restraint order made by the Magistrates' Court does not affect a person's right to commence or continue a proceeding in any jurisdiction other than the Magistrates' Court.
- (4) An extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court or the Children's Court against a person does not affect the person's right—
 - (a) to commence or continue a proceeding in the Magistrates' Court or the Children's Court against a person, the child of a person or in

respect of a matter not specified in the order;
or

- (b) to commence or continue a proceeding in the Magistrates' Court or the Children's Court under legislation other than intervention order legislation; or
- (c) to commence or continue a proceeding in any jurisdiction other than the Magistrates' Court or the Children's Court.

27 Duration of extended litigation restraint order

- (1) An extended litigation restraint order, including an order that relates to intervention order legislation, remains in force for the period specified in the order.
- (2) A Court or VCAT may specify that an order referred to in subsection (1) remains in force indefinitely.
- (3) A Court or VCAT may extend the duration of an extended litigation restraint order referred to in subsection (1) if the Court or VCAT considers it is in the interests of justice to do so.

PART 4—GENERAL LITIGATION RESTRAINT ORDERS

28 Application for general litigation restraint order

The Attorney-General may apply to the Supreme Court for a general litigation restraint order against a person.

29 Supreme Court may make general litigation restraint order

- (1) The Supreme Court constituted by a Judge of the Court may make a general litigation restraint order against a person if the Court is satisfied that the person has persistently and without reasonable grounds commenced or conducted vexatious proceedings.
- (2) In determining whether it is satisfied of the matters specified in subsection (1), the Supreme Court may take into account any matter it considers relevant, including but not limited to any of the following—
 - (a) any proceeding commenced or conducted by the person, or an entity controlled by the person, in any Australian court or tribunal;
 - (b) the existence of any order made by an Australian court or tribunal against the person, or an entity controlled by the person, including—
 - (i) a litigation restraint order; or
 - (ii) an acting in concert order; or
 - (iii) a vexatious proceeding order;
 - (c) any other matter relating to the way in which the person conducts or has conducted litigation.

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- (3) The Supreme Court may take into account a matter referred to in subsection (2) that relates to a proceeding commenced or conducted before, on or after the commencement of this section.
 - (4) The Supreme Court may make a general litigation restraint order—
 - (a) on its own motion; or
 - (b) on an application under section 28.

30 General litigation restraint order

- (1) A general litigation restraint order made against a person may direct that the person must not do either or both of the following for the period specified by the Supreme Court—
 - (a) continue any proceeding in a Victorian court or tribunal without leave of—
 - (i) the Supreme Court; or
 - (ii) the Victorian court or tribunal in which the proceeding is being heard;
 - (b) commence any proceeding in a Victorian court or tribunal without leave of—
 - (i) the Supreme Court; or
 - (ii) the Victorian court or tribunal in which the proceeding is to be commenced.
- (2) A general litigation restraint order may include any other direction or order that the Supreme Court considers appropriate.
- (3) Without limiting subsection (2), the Supreme Court may direct that the person who is subject to the general litigation restraint order may commence or continue a specified proceeding in a Victorian court or tribunal.

31 Supreme Court may make extended litigation restraint order instead of general litigation restraint order

- (1) On an application under section 28, the Supreme Court may make an extended litigation restraint order against a person the subject of the application if the Court—
 - (a) is not satisfied that the person has persistently and without reasonable grounds commenced or conducted vexatious proceedings; and
 - (b) is satisfied that the person has frequently commenced or conducted vexatious proceedings against a person or other entity or in relation to a matter.
- (2) An extended litigation restraint order made under this section may be made on the same terms as an extended litigation restraint order made by the Supreme Court under Part 3.

32 Effect of general litigation restraint order on proceeding

On the making of a general litigation restraint order, subject to the terms of the order—

- (a) a proceeding to which the order relates is stayed; and
- (b) a proceeding that is commenced in contravention of the order is of no effect.

33 Duration of general litigation restraint order

- (1) A general litigation restraint order remains in force for the period specified in the order.
- (2) The Supreme Court may specify that an order remains in force indefinitely.

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- (3) The Supreme Court may extend the duration of a general litigation restraint order referred to in subsection (1) if it considers it is in the interests of justice to do so.
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PART 5—ACTING IN CONCERT ORDERS

34 Application for acting in concert order

Any of the following persons may apply to a Court or VCAT for an order against a person who is acting in concert with a person who is subject to a litigation restraint order—

- (a) a person who applied for the litigation restraint order to which that other person is subject;
- (b) a person named in an interlocutory application or a proceeding that, if made or commenced by the person who is subject to the litigation restraint order, would contravene the terms of that litigation restraint order.

35 Court or VCAT may make acting in concert order

- (1) A Court or VCAT may make an order against a person who is acting in concert with a person who is subject to a litigation restraint order if satisfied that—
 - (a) the first mentioned person has made an interlocutory application or commenced a proceeding; and
 - (b) the interlocutory application or proceeding, if made or commenced by the person who is subject to the litigation restraint order, would contravene the terms of that litigation restraint order.
- (2) A Court or VCAT may make an order against a person acting in concert—
 - (a) on its own motion; or
 - (b) on an application under section 34.

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- (3) An order made by a Court or VCAT against a person acting in concert may specify all or any of the following—
- (a) that the person is subject to a limited litigation restraint order—
 - (i) on the same terms as the person with whom the person is acting in concert; or
 - (ii) on any of the terms that the Court or VCAT may order under Part 2;
 - (b) that the person is subject to an extended litigation restraint order—
 - (i) on the same terms as the person with whom the person is acting in concert; or
 - (ii) on any of the terms that the Court or VCAT may order under Part 3;
 - (c) that the interlocutory application made by the person in the proceeding is struck out;
 - (d) that the proceeding commenced by the person is stayed;
 - (e) that the person is liable for costs in the proceeding.
- (4) Subject to subsection (5), an acting in concert order may direct any other thing that the Court or VCAT considers appropriate in the circumstances.
- (5) An acting in concert order made against a person must not direct that the person is subject to a general litigation restraint order.

Note

The Supreme Court may order that the person is subject to a general litigation restraint order under Part 4.

36 Magistrates' Court or Children's Court may make acting in concert order—intervention order legislation

- (1) The Magistrates' Court or the Children's Court may make an order against a person who is acting in concert with a person who is subject to an extended litigation restraint order that relates to intervention order legislation if satisfied that—
 - (a) the first mentioned person has commenced a proceeding under intervention order legislation; and
 - (b) the proceeding, if commenced by the person who is subject to the extended litigation restraint order, would contravene the terms of that extended litigation restraint order.
- (2) The Magistrates' Court or the Children's Court may make an order against a person acting in concert—
 - (a) on its own motion; or
 - (b) on an application under section 34.
- (3) An order made by the Magistrates' Court or the Children's Court against a person acting in concert may specify all or any of the following—
 - (a) that the person is subject to an extended litigation restraint order that relates to intervention order legislation—
 - (i) on the same terms as the person with whom the person is acting in concert; or
 - (ii) on any of the terms that the Magistrates' Court or the Children's Court may order under section 22(2) or 23(1) (as the case requires);

(b) that the proceeding commenced by the person is stayed.

(4) An acting in concert order that relates to intervention order legislation may direct any other thing that the Magistrates' Court or the Children's Court considers appropriate in the circumstances.

Note

See section 154 of the **Family Violence Protection Act 2008** or section 111 of the **Personal Safety Intervention Orders Act 2010** in relation to costs for a proceeding for an order made under this section.

PART 6—APPEAL RESTRICTION ORDERS

37 Supreme Court may make an appeal restriction order

- (1) The Supreme Court may make an appeal restriction order against a person if the Supreme Court is satisfied that—
 - (a) the person has frequently made applications for leave to proceed that are vexatious applications; and
 - (b) it is in the interests of justice that the order be made.
- (2) An appeal restriction order made against a person by the Supreme Court may direct that, for the period specified by the Supreme Court, the person has no right to appeal a decision by a Victorian court or tribunal—
 - (a) to refuse leave to make or continue an interlocutory application in a proceeding; or
 - (b) to refuse leave to commence or continue a proceeding.
- (3) An appeal restriction order may be made under subsection (1)—
 - (a) despite anything to the contrary in Part 10; and
 - (b) despite the terms of the litigation restraint order.

38 Court or VCAT may make appeal restriction order

- (1) The County Court, the Magistrates' Court or VCAT may make an appeal restriction order against a person if satisfied that—
 - (a) the person has frequently made applications for leave to proceed that are vexatious applications; and

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- (b) it is in the interests of justice that the order be made.
- (2) An appeal restriction order made under subsection (1) may direct that, for the period specified in the order, the person has no right to appeal a decision by the relevant court or by VCAT—
- (a) to refuse leave to make or continue an interlocutory application in a proceeding in the relevant court or in VCAT (as the case requires); or
- (b) to refuse leave to commence or continue a proceeding in the relevant court or in VCAT (as the case requires).
- (3) An appeal restriction order may be made under subsection (1)—
- (a) despite anything to the contrary in Part 10; and
- (b) despite the terms of the litigation restraint order.

39 Magistrates' Court or Children's Court may make appeal restriction order—intervention order legislation

- (1) The Magistrates' Court or the Children's Court may make an appeal restriction order against a person who is subject to an extended litigation restraint order that relates to intervention order legislation if satisfied that—
- (a) the person has frequently made applications for leave to proceed that are vexatious applications; and
- (b) it is in the interests of justice that the order be made.

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- (2) An appeal restriction order made against a person referred to in subsection (1) by the Magistrates' Court or the Children's Court may direct that, for the period specified in the order, the person has no right to appeal a decision of the relevant court to refuse leave to commence or continue a proceeding in that court.
- (3) An appeal restriction order may be made under subsection (1)—
- (a) despite anything to the contrary in Part 10; and
 - (b) despite the terms of the extended litigation restraint order.

40 Effect of appeal restriction order

On the making of an appeal restriction order, subject to the terms of the order—

- (a) an application for leave to appeal to which the order relates is stayed; and
- (b) an application for leave to appeal made in contravention of the order is of no effect.

41 Appeal restriction order does not affect other applications or proceedings

An appeal restriction order made by a Court or VCAT does not affect a person's right—

- (a) to make or continue another type of interlocutory application in a Victorian court or tribunal; or
- (b) to commence or continue a proceeding in a Victorian court or tribunal (other than the appeal).

Note

The terms of a litigation restraint order may restrict a person's right to make or continue an interlocutory application or commence or continue a proceeding in a Victorian court or tribunal.

42 Duration of appeal restriction order

- (1) An appeal restriction order remains in force for the period specified in the order.
 - (2) A Court or VCAT may specify that an order remains in force indefinitely.
 - (3) A Court or VCAT may extend the duration of an appeal restriction order referred to in subsection (1) if the Court or VCAT considers it is in the interests of justice to do so.
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PART 7—GENERAL MATTERS RELATING TO ORDERS

Division 1—Applications for orders

43 Attorney-General may request documents from Victorian court or tribunal

- (1) For the purposes of deciding whether to make an application for a litigation restraint order against a person, the Attorney-General may request a Victorian court or tribunal to provide a copy of documents held by the Victorian court or tribunal in relation to an interlocutory application made or a proceeding commenced by the person.
- (2) A Victorian court or tribunal may provide to the Attorney-General a copy of documents requested under subsection (1).

44 Notice of application for order—intervention order legislation

The principal registrar of the Magistrates' Court or the Children's Court (as the case requires) must cause a copy of an application under section 18 for an extended litigation restraint order that relates to intervention order legislation to be given to—

- (a) the person who it is proposed will be protected by the order; and
- (b) the person who it is proposed will be subject to the order.

Division 2—Making of orders

45 Certain persons must be given opportunity to be heard

- (1) Subject to subsection (2), a Court or VCAT must not make a litigation restraint order, an acting in concert order or an appeal restriction order against a person without—

- (a) hearing the person; or
 - (b) giving the person an opportunity to be heard.
- (2) The Magistrates' Court or the Children's Court must not make an extended litigation restraint order, an acting in concert order or an appeal restriction order that relates to intervention order legislation without—
- (a) hearing—
 - (i) the person who will be subject to the order; and
 - (ii) the person who will be protected by the order; or
 - (b) giving the persons referred to in paragraph (a) an opportunity to be heard.
- (3) For the purposes of subsections (1) and (2), the Court or VCAT may order that submissions be made in writing or given at an oral hearing.

46 Statement of reasons for order—intervention order legislation

An extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court or the Children's Court must include or be accompanied by a statement of reasons for the decision.

Division 3—Copies of orders

47 Copy of order to be given to Attorney-General

- (1) If a Court or VCAT makes a litigation restraint order, an acting in concert order or an appeal restriction order, the Court or VCAT (as the case requires) must ensure a copy of the order is given to the Attorney-General.

- (2) Despite section 117(6) of the **Victorian Civil and Administrative Tribunal Act 1998**, a copy of an order made by VCAT given to the Attorney-General under subsection (1) is not required to include a statement of reasons referred to in that section.

48 Copy of order to be given to other Victorian courts and tribunals

- (1) If the Supreme Court makes a litigation restraint order, an acting in concert order or an appeal restriction order, the Prothonotary must cause a copy of the order to be given—
- (a) in the case of a general litigation restraint order or an extended litigation restraint order, to each Victorian court or tribunal; or
 - (b) in any other case, to the County Court, the Magistrates' Court and to VCAT.
- (2) If the County Court makes a litigation restraint order, an acting in concert order or an appeal restriction order, the registrar of the County Court must cause a copy of the order to be given to the Supreme Court, the Magistrates' Court and to VCAT.
- (3) If the Magistrates' Court makes a litigation restraint order, an acting in concert order or an appeal restriction order, the principal registrar of the Magistrates' Court must cause a copy of the order to be given—
- (a) in the case of an order that relates to intervention order legislation, to the Supreme Court, the County Court, the Children's Court and to VCAT; or
 - (b) in any other case, to the Supreme Court, the County Court and to VCAT.

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- (4) If the Children's Court makes an extended litigation restraint order, an acting in concert order or an appeal restriction order that relates to intervention order legislation, the principal registrar of the Children's Court must cause a copy of the order to be given to the Supreme Court, the County Court, the Magistrates' Court and to VCAT.
 - (5) If VCAT makes a litigation restraint order, an acting in concert order or an appeal restriction order, the principal registrar of VCAT must cause a copy of the order to be given to the Supreme Court, the County Court and the Magistrates' Court.
 - (6) Despite section 117(6) of the **Victorian Civil and Administrative Tribunal Act 1998**, a copy of an order made by VCAT given to a Court under subsection (5) is not required to include a statement of reasons referred to in that section.

49 Copy of order—intervention order legislation

The principal registrar of the Magistrates' Court or the Children's Court (as the case requires) must cause a copy of an extended litigation restraint order, an acting in concert order or an appeal restriction order that relates to intervention order legislation to be given to—

- (a) the person subject to the order; and
 - (b) the person protected by the order; and
 - (c) if the applicant is not the person protected by the order, the applicant.
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PART 8—APPLICATIONS FOR LEAVE TO PROCEED

Division 1—Application for leave to proceed under limited litigation restraint order

50 Application for leave to make or continue interlocutory application

- (1) A person who is subject to a limited litigation restraint order may apply to the Court that made the order or to VCAT (as the case requires) for leave to make or continue an interlocutory application in the proceeding to which the order relates.
- (2) This section applies despite anything to the contrary in the limited litigation restraint order.

51 Court or VCAT may grant leave to make or continue interlocutory application

On an application under section 50, a Court or VCAT may grant a person who is subject to a limited litigation restraint order leave to make or continue an interlocutory application in a proceeding to which the order relates if the Court or VCAT is satisfied that—

- (a) the interlocutory application to be made or continued is not a vexatious application; and
- (b) there are reasonable grounds for the application.

Division 2—Application for leave to proceed under extended litigation restraint order

52 Application for leave to commence or continue proceeding

- (1) Subject to subsection (2), a person who is subject to an extended litigation restraint order may apply to a Victorian court or tribunal for leave to commence or continue a proceeding—

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- (a) against a person or other entity protected by the order; or
 - (b) in respect of a matter described in the order.
- (2) A person who is subject to an extended litigation restraint order that relates to intervention order legislation may apply to the Magistrates' Court or the Children's Court for leave to commence or continue a proceeding—
- (a) against a person protected by the order or his or her child; or
 - (b) in respect of a matter described in the order.
- (3) Subject to subsection (4), an application under subsection (1) or (2) must be made to the Victorian court or tribunal that made the extended litigation restraint order.
- (4) If the extended litigation restraint order was made by the Supreme Court and the order does not provide otherwise, an application under subsection (1) must be made to the Victorian court or tribunal that would hear the proceeding to which the application for leave relates.
- (5) Subsection (1) applies despite anything to the contrary in the extended litigation restraint order.

53 Court or VCAT may grant leave to commence or continue proceeding

On an application under section 52, a Victorian court or tribunal may grant a person who is subject to a extended litigation restraint order leave to commence or continue a proceeding against a person or other entity protected by the order, a child of a person protected by the order, or in respect of a matter described in the order, if the Victorian court or tribunal is satisfied that—

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- (a) the proceeding is not a vexatious proceeding;
and
 - (b) there are reasonable grounds for the proceeding.

Division 3—Application for leave to proceed under general litigation restraint order

54 Application for leave to commence or continue proceeding

- (1) A person who is subject to a general litigation restraint order may apply to a Victorian court or tribunal for leave to commence or continue a proceeding.
- (2) Unless the general litigation restraint order provides otherwise, an application under subsection (1) must be made to the Victorian court or tribunal that would hear the proceeding to which the leave application relates.
- (3) Subsection (1) applies despite anything to the contrary in the general litigation restraint order.

55 Victorian court or tribunal may grant leave to commence or continue proceeding

On an application under section 54, a Victorian court or tribunal may grant a person who is subject to a general litigation restraint order leave to commence or continue a proceeding if the Victorian court or tribunal is satisfied that—

- (a) the proceeding is not a vexatious proceeding;
and
- (b) there are reasonable grounds for the proceeding.

**Division 4—General matters relating to applications for
leave to proceed**

56 Person must disclose certain matters

- (1) A person subject to a litigation restraint order who makes an application for leave to proceed must disclose the following details to the Victorian court or tribunal in which the application is made—
- (a) details of each application for leave to proceed made by the person;
 - (b) details of each application for leave to commence or continue a proceeding made by the person under section 21 of the **Supreme Court Act 1986**, as in force immediately before its repeal;
 - (c) details of each interlocutory application made or proceeding commenced or conducted by the person—
 - (a) that is a vexatious application or a vexatious proceeding; or
 - (b) which has been stayed or dismissed on the basis of being made, commenced or conducted without merit;
 - (d) an explanation as to how the application for leave to proceed is materially different to each application referred to in paragraph (a), (b) or (c) (if any);
 - (e) all other facts material to the application, whether in support of or adverse to the application, that are known to the person.
- (2) A disclosure under subsection (1) must be made by affidavit unless the rules of the court or rules of the tribunal otherwise provide or the Victorian court or tribunal otherwise orders.

57 Refusal to accept application for leave to proceed

- (1) Subject to subsection (2), the following persons may refuse on behalf of a Victorian court or tribunal to accept for filing or lodgment an application for leave to proceed, if not satisfied that the application is materially different from a previous application made by the applicant—
- (a) in the case of the Supreme Court—the Prothonotary; or
 - (b) in the case of the County Court—the registrar of the County Court; or
 - (c) in the case of the Magistrates' Court—the principal registrar of the Magistrates' Court; or
 - (d) in the case of the Children's Court for an application that relates to intervention order legislation—the principal registrar of the Children's Court; or
 - (e) in the case of VCAT—the principal registrar of VCAT; or
 - (f) in the case of VOCAT—the principal registrar of VOCAT.
- (2) The Victorian court or tribunal may direct the relevant person referred to in subsection (1) to accept an application for leave to proceed.

58 Victorian court or tribunal may dismiss application for leave to proceed

A Victorian court or tribunal may dismiss an application for leave to proceed made by a person if the Victorian court or tribunal is not satisfied that the application is materially different to a previous application made by that person.

59 No notice of application to be given without direction or order

Despite anything to the contrary in any other Act or rules of court, a person who makes an application for leave to proceed must not give notice of the application unless a Victorian court or tribunal—

- (a) otherwise directs the applicant under section 60 or 61; or
- (b) makes an order in relation to the notification of persons.

60 Direction as to giving notice of application

- (1) This section applies if a Victorian court or tribunal considers that an application for leave to proceed, other than an application for leave to proceed under an extended litigation restraint order that relates to intervention order legislation, should proceed.
- (2) The Victorian court or tribunal must direct the applicant for leave to proceed to give notice of the application to the following persons—
 - (a) the Attorney-General;
 - (b) the person (if any) who made the application for the litigation restraint order to which the application for leave to proceed relates;
 - (c) any person named in the interlocutory application or the proceeding to which the application for leave to proceed relates.
- (3) A Victorian court or tribunal may make any other order in relation to the notification of persons that it considers appropriate in the circumstances.

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- (4) Notice given by an applicant in accordance with this section must—
- (a) include a copy of the application for leave to proceed; and
 - (b) state that the person given the application is entitled to make submissions in relation to the application.

**61 Direction as to giving notice of application—
intervention order legislation**

- (1) This section applies if the Magistrates' Court or the Children's Court considers that an application for leave to proceed under an extended litigation restraint order that relates to intervention order legislation should proceed.
- (2) The Magistrates' Court or the Children's Court (as the case requires) must direct the principal registrar of the court to cause notice of the application to be given to the following persons—
 - (a) the Attorney-General;
 - (b) the person (if any) who made the application for the extended litigation restraint order to which the application for leave to proceed relates;
 - (c) any person named in the proceeding to which the application for leave to proceed relates.
- (3) The Magistrates' Court or the Children's Court may make any other order in relation to the notification of persons that it considers appropriate in the circumstances.
- (4) Notice given in accordance with this section must—
 - (a) include a copy of the application for leave to proceed; and

- (b) state that the person given notice of the application is entitled to make submissions in relation to the application.

62 Victorian court or tribunal may give persons opportunity to be heard

- (1) A person who has been given notice in accordance with section 60 or 61 may be heard in relation to the application for leave to proceed.
- (2) For the purposes of subsection (1), the Victorian court or tribunal may direct that the person make written submissions or oral submissions.

63 Determining application for leave to proceed

- (1) A Victorian court or tribunal may determine an application for leave to proceed on the basis of written submissions, without the appearance of—
- (a) the person who made the application; or
- (b) any person given notice of the application in accordance with section 60 or 61.
- (2) Despite subsection (1), a Victorian court or tribunal may determine an application for leave to proceed by conducting an oral hearing, if the Victorian court or tribunal considers—
- (a) there are exceptional circumstances; and
- (b) it is appropriate to do so, having regard to the interests of justice.
- (3) An oral hearing may be held under subsection (2) regardless of whether written submissions have been made to the Victorian court or tribunal and, if made, whether those submissions establish the matters required for the granting of leave or the dismissal of the application.

64 Leave may be subject to conditions

If a Victorian court or tribunal grants a person leave to make or continue an interlocutory application, or to commence or continue a proceeding, the leave may be subject to any conditions that the Victorian court or tribunal considers appropriate in the circumstances.

Example

The Victorian court or tribunal may order that the person must deposit a certain amount of funds with the Victorian court or tribunal as security for costs in the proceeding.

**PART 9—VARIATION OR REVOCATION OF LITIGATION
RESTRAINT ORDER**

Division 1—Court or VCAT may vary or revoke order

**65 Application for variation or revocation of litigation
restraint order**

- (1) Subject to subsection (2), a person who is subject to a litigation restraint order may apply to vary or revoke the order—
 - (a) to the Court that made the order with leave of that Court; or
 - (b) if the order was made by VCAT, to VCAT with leave of VCAT.
- (2) A person who is subject to an extended litigation restraint order that relates to intervention order legislation may apply to vary or revoke the order—
 - (a) if the order was made by the Magistrates' Court, to the Magistrates' Court with leave of that court; or
 - (b) if the order was made by the Children's Court, to the Children's Court with leave of that court.
- (3) This section applies despite anything to the contrary in the litigation restraint order, including an extended litigation restraint order that relates to intervention order legislation.

**66 No notice of application to be given without
direction or order**

- (1) Despite anything to the contrary in any other Act or rules of court, a person who makes an application for leave to apply to vary or revoke a litigation restraint order must not give notice of the application for leave unless a Court or VCAT

makes an order in relation to the notification of persons.

- (2) Despite anything to the contrary in any other Act or rules of court, a person who makes an application to vary or revoke a litigation restraint order must not give notice of the application unless a Court or VCAT—
 - (a) otherwise directs the applicant under section 67 or 68; or
 - (b) makes an order in relation to the notification of persons.

67 Direction as to notice of application

- (1) This section applies if a Court or VCAT considers that an application to vary or revoke a litigation restraint order, other than an application to vary or revoke an extended litigation restraint order that relates to intervention order legislation, should proceed.
- (2) The Court or VCAT (as the case requires) must direct the applicant for the variation or revocation to give notice of the application to the following persons—
 - (a) the Attorney-General;
 - (b) the person (if any) who made the application for the litigation restraint order;
 - (c) the person (if any) who is protected by the litigation restraint order.
- (3) A Court or VCAT may make any other order in relation to the notification of persons that it considers appropriate in the circumstances.
- (4) Notice given by an applicant in accordance with this section must—
 - (a) include a copy of the application for variation or revocation; and

- (b) state that the person given the application is entitled to make submissions in relation to the application.

68 Direction as to notice of application—intervention order legislation

- (1) This section applies if the Magistrates' Court or the Children's Court considers that an application to vary or revoke an extended litigation restraint order that relates to intervention order legislation should proceed.
- (2) The Magistrates' Court or the Children's Court (as the case requires) must direct the principal registrar of the court to cause notice of the application to be given to the following persons—
 - (a) the Attorney-General;
 - (b) the person (if any) who made the application for the extended litigation restraint order;
 - (c) the person protected by the extended litigation restraint order.
- (3) The Magistrates' Court or the Children's Court may make any other order in relation to the notification of persons that it considers appropriate in the circumstances.
- (4) Notice given in accordance with this section must—
 - (a) include a copy of the application for variation or revocation; and
 - (b) state that the person given notice of the application is entitled to make submissions in relation to the application.

69 Court or VCAT may vary or revoke litigation restraint order

- (1) If it considers it is in the interests of justice to do so, a Court or VCAT may by order—
 - (a) vary a litigation restraint order in any manner the Court or VCAT considers appropriate; or
 - (b) revoke a litigation restraint order.
- (2) A Court or VCAT may make an order under subsection (1)—
 - (a) on its own motion; or
 - (b) on an application under section 65(1) or (2).

70 Court or VCAT may give persons opportunity to be heard

- (1) A person who has been given notice in accordance with section 67 or 68 may be heard in relation to the application to vary or revoke a litigation restraint order.
- (2) For the purposes of subsection (1), the Court or VCAT may direct that the person make written submissions or oral submissions.

71 Determining application for variation or revocation

- (1) A Court or VCAT may determine an application to vary or revoke a litigation restraint order on the basis of written submissions, without the appearance of—
 - (a) the person who made the application; or
 - (b) any person given notice of the application in accordance with section 67 or 68.
- (2) Despite subsection (1), a Court or VCAT may determine an application referred to in subsection (1) by conducting an oral hearing if the Court or VCAT considers—

- (a) there are exceptional circumstances; and
 - (b) it is appropriate to do so, having regard to the interests of justice.
- (3) An oral hearing may be held under subsection (2) regardless of—
- (a) whether written submissions have been made to the Court or VCAT; and
 - (b) if submissions have been made, whether those submissions establish the matters required for the variation or revocation of the litigation restraint order or the dismissal of the application.

72 Notice of order to be given to Attorney-General

- (1) If a Court or VCAT makes an order varying or revoking a litigation restraint order, the Court or VCAT (as the case requires) must ensure a copy of the order is given to the Attorney-General.
- (2) Despite section 117(6) of the **Victorian Civil and Administrative Tribunal Act 1998**, a copy of an order made by VCAT given to the Attorney-General under subsection (1) is not required to include a statement of reasons referred to in that section.

73 Notice of order to be given to Victorian courts and tribunals

- (1) If the Supreme Court makes an order varying or revoking a litigation restraint order, the Prothonotary of the Supreme Court must cause a copy of the order to be given—
 - (a) in the case of the variation or revocation of a general litigation restraint order or an extended litigation restraint order, to each Victorian court or tribunal; or

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- (b) in the case of the variation or revocation of a limited litigation restraint order, to the County Court, the Magistrates' Court and to VCAT.
- (2) If the County Court makes an order varying or revoking a litigation restraint order, the registrar of the County Court must cause a copy of the order to be given to the Supreme Court, the Magistrates' Court and to VCAT.
- (3) If the Magistrates' Court makes an order varying or revoking a litigation restraint order, the principal registrar of the Magistrates' Court must cause a copy of the order to be given—
- (a) in the case of the variation or revocation of an extended litigation restraint order that relates to intervention order legislation, to the Supreme Court, the County Court, the Children's Court and to VCAT; or
- (b) in any other case, to the Supreme Court, the County Court and to VCAT.
- (4) If the Children's Court makes an order varying or revoking an extended litigation restraint order that relates to intervention order legislation, the principal registrar of the Children's Court must cause a copy of the order to be given to the Supreme Court, the County Court, the Magistrates' Court and to VCAT.
- (5) If VCAT makes an order varying or revoking a litigation restraint order, the principal registrar of VCAT must cause a copy of the order to be given to the Supreme Court, the County Court and the Magistrates' Court.
- (6) Despite section 117(6) of the **Victorian Civil and Administrative Tribunal Act 1998**, a copy of an order made by VCAT given to a Court under

subsection (5) is not required to include a statement of reasons referred to in that section.

Division 2—Variation or revocation application prevention orders

74 Court or VCAT may make variation or revocation application prevention order

- (1) Subject to subsection (2), a Court or VCAT may make a variation or revocation application prevention order in respect of a person who is subject to a litigation restraint order if satisfied that—
 - (a) the person has frequently made applications for leave to vary or revoke a litigation restraint order; and
 - (b) the applications are vexatious applications.
- (2) The Magistrates' Court or the Children's Court may make a variation or revocation application prevention order in respect of a person who is subject to an extended litigation restraint order that relates to intervention order legislation if satisfied that—
 - (a) the person has frequently made applications for leave to vary or revoke the extended litigation restraint order; and
 - (b) the applications are vexatious applications.
- (3) A variation or revocation application prevention order referred to in subsection (1) or (2) may only be made by the Court that made the litigation restraint order or by VCAT (as the case requires).
- (4) A variation or revocation application prevention order made under subsection (1) or (2) may direct that a person must not do either or both of the following for the period specified by the Court or by VCAT—

- (a) continue an application for leave to vary or revoke a litigation restraint order;
- (b) apply for leave to vary or revoke a litigation restraint order.

75 Effect of variation or revocation application prevention order

On the making of a variation or revocation application prevention order, subject to the terms of the order—

- (a) an application to which the order relates is stayed; and
- (b) an application made in contravention of the order is of no effect.

76 Order does not affect other applications or proceedings

A variation or revocation application prevention order made by a Court or VCAT does not affect a person's right—

- (a) to make or continue another type of interlocutory application in a Victorian court or tribunal; or
- (b) to commence or continue a proceeding in a Victorian court or tribunal.

Note

The terms of a litigation restraint order may restrict a person's right to make or continue an interlocutory application or commence or continue a proceeding in a Victorian court or tribunal.

77 Duration of order

- (1) A variation or revocation application prevention order remains in force for the period specified in the order.
- (2) A Court or VCAT may specify that a variation or revocation application prevention order remains in force indefinitely.

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Part 9—Variation or Revocation of Litigation Restraint Order

- (3) A Court or VCAT may extend the duration of a variation or revocation application prevention order referred to in subsection (1) if the Court or VCAT considers it is in the interests of justice to do so.
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PART 10—APPEALS

78 Application of this Part

This Part applies despite anything to the contrary in a litigation restraint order.

79 Appeal of decisions to which this Part applies

With leave of the Supreme Court, a person may appeal on a question of law arising in any of the following decisions of a Victorian court or tribunal—

- (a) a decision to refuse leave to apply for a litigation restraint order;
- (b) a decision to make a litigation restraint order or an acting in concert order;
- (c) a decision to refuse to make a litigation restraint order or an acting in concert order;
- (d) a decision to vary or revoke a litigation restraint order;
- (e) a decision to refuse to vary or revoke a litigation restraint order;
- (f) subject to any appeal restriction order, a decision to refuse an application for leave to proceed.

Note

See also section 8.

80 No notice of application to be given without direction or order

Despite anything to the contrary in any other Act or rules of court, a person who makes an application for leave to appeal a decision to which this Part applies must not give notice of the application unless the Supreme Court—

- (a) otherwise directs the applicant under section 81 or 82; or

- (b) makes an order in relation to the notification of persons.

81 Direction as to giving notice of application

- (1) This section applies if the Supreme Court considers that an application for leave to appeal a decision to which this Part applies, other than an application to appeal a decision that relates to intervention order legislation, should proceed.
- (2) The Supreme Court must direct the applicant for leave to appeal to give notice of the application to the following persons—
- (a) in the case of an application for leave to appeal a decision to refuse leave to apply for a litigation restraint order, the person who is the subject of the proposed order;
 - (b) in the case of an application for leave to appeal a decision to make a litigation restraint order or an acting in concert order—
 - (i) the Attorney-General; and
 - (ii) the person (if any) who applied for the order; and
 - (iii) the person (if any) who is protected by the order;
 - (c) in the case of an application for leave to appeal a decision to refuse to make a litigation restraint order or an acting in concert order, the person who is the subject of the proposed order;
 - (d) in the case of an application for leave to appeal the variation or revocation of a litigation restraint order, the person who is or was the subject of the litigation restraint order;

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- (e) in the case of an application for leave to appeal a decision to refuse to vary or revoke a litigation restraint order—
- (i) the Attorney-General; and
 - (ii) the person (if any) who applied for the litigation restraint order; and
 - (iii) the person (if any) who is protected by the litigation restraint order;
- (f) in the case of an application for leave to appeal a decision to refuse an application for leave to proceed—
- (i) the Attorney-General; and
 - (ii) the person (if any) who made the application for the litigation restraint order to which the application for leave to proceed relates; and
 - (iii) the persons who are named in the proposed interlocutory application or proceeding.
- (3) The Supreme Court may make any other order in relation to the notification of persons that it considers appropriate in the circumstances.
- (4) Notice given by an applicant in accordance with this section must—
- (a) include a copy of the application for leave to appeal; and
 - (b) state that the person given notice is entitled to be heard in relation to the application for leave to appeal.

**82 Direction as to giving notice of application—
intervention order legislation**

- (1) This section applies if the Supreme Court considers that an application for leave to appeal a decision to which this Part applies that relates to intervention order legislation should proceed.
- (2) The Supreme Court must direct the Prothonotary to cause notice of the application to be given to the following persons—
 - (a) in the case of an application for leave to appeal a decision to refuse leave to apply for an extended litigation restraint order, the person who is the subject of the proposed order;
 - (b) in the case of an application for leave to appeal a decision to make an extended litigation restraint order or an acting in concert order—
 - (i) the Attorney-General; and
 - (ii) the person (if any) who applied for the order; and
 - (iii) the person (if any) who is protected by the order;
 - (c) in the case of an application for leave to appeal a decision to refuse to make an extended litigation restraint order or an acting in concert order, the person who is the subject of the proposed order;
 - (d) in the case of an application for leave to appeal the variation or revocation of an extended litigation restraint order, the person who is or was the subject of the extended litigation restraint order;

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- (e) in the case of an application for leave to appeal a decision to refuse to vary or revoke an extended litigation restraint order—
- (i) the Attorney-General; and
 - (ii) the person (if any) who applied for the extended litigation restraint order; and
 - (iii) the person (if any) who is protected by the extended litigation restraint order;
- (f) in the case of an application for leave to appeal a decision to refuse an application for leave to proceed—
- (i) the Attorney-General; and
 - (ii) the person (if any) who made the application for the extended litigation restraint order to which the application for leave to proceed relates; and
 - (iii) the persons who are named in the proposed interlocutory application or proceeding.
- (3) The Supreme Court may make any other order in relation to the notification of persons that it considers appropriate in the circumstances.
- (4) Notice given in accordance with this section must—
- (a) include a copy of the application for leave to appeal; and
 - (b) state that the person given notice is entitled to be heard in relation to the application for leave to appeal.

83 Court may give persons opportunity to be heard

- (1) A person who has been given notice in accordance with section 81 or 82 may be heard in relation to the application for leave to appeal a decision to which this Part applies.
- (2) For the purposes of subsection (1), the Supreme Court may direct that the person make written submissions or oral submissions.

84 Determining application for leave to appeal

- (1) The Supreme Court may determine an application for leave to appeal under this Part on the basis of written submissions, without the appearance of the person who made the application or any person given notice in accordance with section 81 or 82.
 - (2) Despite subsection (1), the Supreme Court may determine an application referred to in that subsection by conducting an oral hearing, if the Supreme Court considers—
 - (a) there are exceptional circumstances; and
 - (b) it is appropriate to do so, having regard to the interests of justice.
 - (3) An oral hearing may be held under subsection (2) regardless of—
 - (a) whether written submissions have been made to the Supreme Court; and
 - (b) if submissions have been made, whether those submissions establish the matters required for the determination or dismissal of the application.
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PART 11—MISCELLANEOUS PROVISIONS

85 Attorney-General to publish copy of order

- (1) The Attorney-General must cause a copy of any order given to the Attorney-General under this Act to be published in the Government Gazette.
- (2) The Attorney-General may publish the details of the order in any other manner that the Attorney-General thinks fit, including on the Internet.

Example

The Attorney-General may publish the details of a litigation restraint order or a variation or revocation of a litigation restraint order on the Internet on the Department's website.

- (3) Subject to subsection (4), a copy of an order published under this section may have removed from it the name of any person or other entity protected by the order.
- (4) A copy of an order published under this section that relates to intervention order legislation must have removed from it the name of any person protected by the order, including a child of a person protected by the order, unless the Court, when making the order, otherwise orders.

86 Publication of names—intervention order legislation

- (1) At the time of making an order under this Act that relates to intervention order legislation, the Magistrates' Court or the Children's Court may specify in the order that the name of the person protected by the order, or the name of his or her child, may be published by the Attorney-General under section 85.

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- (2) The Magistrates' Court or the Children's Court may only allow the publication of the particulars referred to in subsection (1) if—
- (a) the court reasonably considers it is in the public interest to allow the publication of the particulars; and
 - (b) the court reasonably considers it is just to allow the publication in the circumstances.

87 Annual reports

- (1) Each of the Courts and VCAT must give to the Attorney-General a report each financial year stating—
- (a) the number of litigation restraint orders, acting in concert orders and appeal restriction orders made by the Court or by VCAT in that year; and
 - (b) the number of litigation restraint orders that were varied or revoked by the Court or by VCAT in that year; and
 - (c) any other prescribed matters.
- (2) A report under subsection (1) must be given to the Attorney-General as soon as practicable after the end of the financial year to which it relates.

88 Rules of Court

- (1) Without limiting any other power to make rules of court, rules of court made by the authority having for the time being power to make rules regulating the practice and procedure of a court or tribunal may include rules for or with respect to any matter for which provision may be made under this Act by rules of court.
- (2) Rules of court made under this Act may regulate generally the practice and procedure of a court or tribunal under this Act.

89 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
 - (a) be of general or limited application; and
 - (b) differ according to differences in time, place or circumstances; and
 - (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies; and
 - (d) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person; and
 - (e) provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
 - (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to any extent that is specified; and
 - (f) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any other person, whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

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(iii) as formulated, issued, prescribed or
published from time to time.

PART 12—TRANSITIONAL PROVISIONS

90 Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Part does not affect or take away from the **Interpretation of Legislation Act 1984**.

91 Supreme Court Act 1986—orders declaring person to be vexatious litigant

- (1) An order declaring a person to be a vexatious litigant made under section 21(2) of the **Supreme Court Act 1986** as in force immediately before the repeal of section 21 of that Act is taken on and from that repeal to be a general litigation restraint order made by the Supreme Court under section 29 of this Act.
- (2) The terms of a general litigation restraint order referred to in subsection (1) are the same as the terms of the order made under section 21(2) of the **Supreme Court Act 1986** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.

92 Supreme Court Act 1986—applications not heard or determined before repeal of section 21

If immediately before the repeal of section 21 of the **Supreme Court Act 1986**, an application has been made under that section but the Supreme Court has not begun to hear and determine that application, on and from that repeal—

- (a) the application is taken to be an application made by the Attorney-General under section 28 of this Act for a general litigation restraint order; and
- (b) this Act applies to the hearing and determination of the application.

93 Supreme Court Act 1986—applications not determined before repeal of section 21

- (1) Despite the repeal of section 21 of the **Supreme Court Act 1986**, that section, as in force immediately before its repeal, continues to apply to the hearing and determination of an application under section 21(1) of that Act if, immediately before that repeal—
 - (a) the Supreme Court has begun to hear and determine the application; and
 - (b) the application has not been finally determined.
- (2) If an order declaring a person to be a vexatious litigant is made in accordance with subsection (1) by the Supreme Court under section 21(2) of the **Supreme Court Act 1986** as in force immediately before its repeal, on the making of the order—
 - (a) the order declaring a person to be a vexatious litigant is taken to be a general litigation restraint order made by the Supreme Court under section 29 of this Act; and
 - (b) the terms of the general litigation restraint order are the same as the terms of the order made under section 21(2) of the **Supreme Court Act 1986** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.

94 Family Violence Protection Act 2008—orders declaring person to be vexatious litigant

- (1) Subject to section 96, an order declaring a person to be a vexatious litigant made under section 193 of the **Family Violence Protection Act 2008** and in force immediately before the repeal of Part 11 of that Act is taken on and from that repeal to be—

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- (a) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act; or
 - (b) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act.
- (2) The terms of an extended litigation restraint order referred to in subsection (1) are the same as the terms of the order made under section 193 of the **Family Violence Protection Act 2008**, as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.

95 Family Violence Protection Act 2008—applications not heard and determined before repeal of Part 11

- (1) If immediately before the repeal of Part 11 of the **Family Violence Protection Act 2008**, an application has been made under section 189 of that Act but the Magistrates' Court or the Children's Court has not begun to hear and determine that application, on and from that repeal—
- (a) the application is taken to be—
 - (i) in the case of an application made by the Attorney-General—an application made by the Attorney-General under section 18 of this Act for an extended litigation restraint order that relates to intervention order legislation; or
 - (ii) in the case of an application made by a person referred to in section 189(1)(b), (c) or (d) of the **Family Violence Protection Act 2008**—an application

made under section 18 of this Act by a person referred to in section 18(1)(b) for an extended litigation restraint order that relates to intervention order legislation; and

- (b) this Act applies to the hearing and determination of the application.
- (2) If immediately before the repeal of Part 11 of the **Family Violence Protection Act 2008**, an application referred to in section 194 of that Act has been made but the Magistrates' Court or the Children's Court has not begun to hear and determine that application, on and from that repeal—
- (a) the application is taken to be an application for leave to proceed made under section 52(2) of this Act; and
 - (b) this Act applies to the hearing and determination of the application.
- (3) If immediately before the repeal of Part 11 of the **Family Violence Protection Act 2008**, an application has been made under section 197 of that Act but the Magistrates' Court or the Children's Court has not begun to hear and determine that application, on and from that repeal—
- (a) the application is taken to be an application made under section 65 of this Act for the variation or revocation of an extended litigation restraint order that relates to intervention order legislation; and
 - (b) this Act applies to the hearing and determination of the application.

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- (4) If immediately before the repeal of Part 11 of the **Family Violence Protection Act 2008**, an application has been made under section 195 of that Act but the Supreme Court or the County Court has not begun to hear and determine that application, on and from that repeal—
- (a) the application is taken to be an application made under section 79 of this Act for leave to appeal against an extended litigation restraint order that relates to intervention order legislation; and
 - (b) this Act applies to the hearing and determination of the application.

96 Family Violence Protection Act 2008—applications not determined before repeal of Part 11

- (1) Despite the repeal of Part 11 of the **Family Violence Protection Act 2008**, that Part, as in force immediately before its repeal, continues to apply to the hearing and determination of an application under section 189, 194, 195 or 197 of that Act if, immediately before that repeal—
- (a) a Court has begun to hear and determine the application; and
 - (b) the application has not been finally determined.
- (2) If an order declaring a person to be a vexatious litigant is made in accordance with subsection (1) by the Magistrates' Court or the Children's Court under section 193 of the **Family Violence Protection Act 2008** as in force immediately before its repeal, on the making of the order—
- (a) that order is taken to be—
 - (i) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to

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- intervention order legislation made by the Magistrates' Court under section 19 of this Act; or
- (ii) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act; and
- (b) the terms of the extended litigation restraint order are the terms of the order made under section 193 of the **Family Violence Protection Act 2008** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.
- (3) If an application for leave to make an application under the **Family Violence Protection Act 2008**, made by a person who is declared to be a vexatious litigant under Part 11 of that Act or Part 10 of the **Personal Safety Intervention Orders Act 2010**, is decided in accordance with subsection (1) by the Magistrates' Court or the Children's Court under section 194 of the **Family Violence Protection Act 2008** as in force immediately before its repeal, on the deciding of that application—
- (a) the applicant is taken to have been granted or refused leave under section 53 of this Act to commence or continue a proceeding (as the case requires); and
- (b) the order declaring the person to be a vexatious litigant is taken to be—
- (i) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by

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- the Magistrates' Court under section 19 of this Act; or
- (ii) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act; and
- (c) the terms of the extended litigation restraint order are the terms of the order made under section 193 of the **Family Violence Protection Act 2008** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.
- (4) If an order varying an order declaring a person to be a vexatious litigant is made in accordance with subsection (1) by the Magistrates' Court or the Children's Court under section 197 of the **Family Violence Protection Act 2008** as in force immediately before its repeal, on and from the date of the variation order, the order declaring a person to be a vexatious litigant is taken to be—
- (a) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act, the terms of which are varied in accordance with the variation order; or
- (b) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act, the terms of which are varied in accordance with the variation order.

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- (5) If the Supreme Court or the County Court, on an appeal under section 195 of the **Family Violence Protection Act 2008** being dealt with in accordance with subsection (1), determines that an order declaring a person to be a vexatious litigant is to remain in force, on and from the date of that determination—
- (a) the order declaring a person to be a vexatious litigant is taken to be—
 - (i) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act; or
 - (ii) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act; and
 - (b) the terms of the extended litigation restraint order are the terms of the order made under section 193 of the **Family Violence Protection Act 2008** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.

**97 Personal Safety Intervention Orders Act 2010—
orders declaring person to be vexatious litigant**

- (1) Subject to section 99, an order declaring a person to be a vexatious litigant made under section 165 of the **Personal Safety Intervention Orders Act 2010** and in force immediately before the repeal of Part 10 of that Act is taken on and from that repeal to be—

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- (a) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act; or
 - (b) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act.
- (2) The terms of an extended litigation restraint order referred to in subsection (1) are the same as the terms of the order made under section 165 of the **Personal Safety Intervention Orders Act 2010** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.

**98 Personal Safety Intervention Orders Act 2010—
Applications not heard and determined before
repeal of Part 10**

- (1) If immediately before the repeal of Part 10 of the **Personal Safety Intervention Orders Act 2010**, an application has been made under section 161 of that Act but the Magistrates' Court or the Children's Court has not begun to hear and determine that application, on and from that repeal—
- (a) the application is taken to be—
 - (i) in the case of an application made by the Attorney-General—an application made by the Attorney-General under section 18 of this Act for an extended litigation restraint order that relates to intervention order legislation; or

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- (ii) in the case of an application made by a person referred to in section 161(1)(b), (c) or (d) of the **Personal Safety Intervention Orders Act 2010**—an application made under section 18 of this Act by a person referred to in section 18(1)(b) for an extended litigation restraint order that relates to intervention order legislation; and
- (b) this Act applies to the hearing and determination of the application.
- (2) If immediately before the repeal of Part 10 of the **Personal Safety Intervention Orders Act 2010**, an application referred to in section 166 of that Act has been made but the Magistrates' Court or the Children's Court has not begun to hear and determine that application, on and from that repeal—
- (a) the application is taken to be an application for leave to proceed made under section 52(2) of this Act; and
- (b) this Act applies to the hearing and determination of the application.
- (3) If immediately before the repeal of Part 10 of the **Personal Safety Intervention Orders Act 2010**, an application has been made under section 169 of that Act but the Magistrates' Court or the Children's Court has not begun to hear and determine that application, on and from that repeal—
- (a) the application is taken to be an application made under section 65 of this Act for the revocation or variation of an extended litigation restraint order that relates to intervention order legislation; and

(b) this Act applies to the hearing and determination of the application.

(4) If immediately before the repeal of Part 10 of the **Personal Safety Intervention Orders Act 2010**, an application has been made under section 167 of that Act but the Supreme Court or the County Court has not begun to hear and determine that application, on and from that repeal—

(a) the application is taken to be an application made under section 79 of this Act for leave to appeal against an extended litigation restraint order that relates to intervention order legislation; and

(b) this Act applies to the hearing and determination of the application.

**99 Personal Safety Intervention Orders Act 2010—
applications not determined before repeal of Part 10**

(1) Despite the repeal of Part 10 of the **Personal Safety Intervention Orders Act 2010**, that Part, as in force immediately before its repeal, continues to apply to the hearing and determination of an application under section 161, 166, 167 or 169 of that Act if, immediately before that repeal—

(a) a Court has begun to hear and determine the application; and

(b) the application has not been finally determined.

(2) If an order declaring a person to be a vexatious litigant is made in accordance with subsection (1) by the Magistrates' Court or the Children's Court under section 165 of the **Personal Safety Intervention Orders Act 2010** as in force immediately before its repeal, on the making of the order—

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- (a) the order declaring a person to be a vexatious litigant is taken to be—
- (i) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act; or
 - (ii) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act; and
- (b) the terms of the extended litigation restraint order are the terms of the order made under section 165 of the **Personal Safety Intervention Orders Act 2010** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.
- (3) If an application for leave to make an application under the **Personal Safety Intervention Orders Act 2010**, made by a person who is declared to be a vexatious litigant under Part 10 of that Act or Part 11 of the **Family Violence Protection Act 2008**, is decided in accordance with subsection (1) by the Magistrates' Court or the Children's Court under section 166 of the **Personal Safety Intervention Orders Act 2010** as in force immediately before its repeal, on the deciding of that application—
- (a) the applicant is taken to have been granted or refused leave under section 53 of this Act to commence or continue a proceeding (as the case requires); and

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- (b) the order declaring the person to be a vexatious litigant is taken to be—
- (i) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act; or
 - (ii) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act; and
- (c) the terms of the extended litigation restraint order are the terms of the order made under section 165 of the **Personal Safety Intervention Orders Act 2010** as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.
- (4) If an order to vary an order declaring a person to be a vexatious litigant is made in accordance with subsection (1) by the Magistrates' Court or the Children's Court under section 169 of the **Personal Safety Intervention Orders Act 2010** as in force immediately before its repeal, on and from the date of the variation order, the order declaring a person to be a vexatious litigant is taken to be—
- (a) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act, the terms of which are varied in accordance with the variation order; or

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- (b) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act, the terms of which are varied in accordance with the variation order.
- (5) If the Supreme Court or the County Court, on an appeal under section 167 of the **Personal Safety Intervention Orders Act 2010** being dealt with in accordance with subsection (1), determines that an order declaring a person to be a vexatious litigant is to remain in force, on and from the date of that determination—
- (a) the order declaring a person to be a vexatious litigant is taken to be—
- (i) in the case of an order made by the Magistrates' Court, an extended litigation restraint order that relates to intervention order legislation made by the Magistrates' Court under section 19 of this Act; or
- (ii) in the case of an order made by the Children's Court, an extended litigation restraint order that relates to intervention order legislation made by the Children's Court under section 19 of this Act; and
- (b) the terms of the extended litigation restraint order are the terms of the order made under section 165 of the **Personal Safety Intervention Orders Act 2010**, as in force immediately before its repeal, unless those terms are otherwise varied or revoked under this Act.

100 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act.
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or from the date that this Act receives the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) differ according to differences in time, place or circumstances; and
 - (d) leave any matter or thing to be decided by a specified person or specified class of persons; and
 - (e) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations made under this section have effect despite anything to the contrary—
 - (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
 - (b) in any subordinate instrument.
- (4) This section is **repealed** on the second anniversary of the day on which it comes into operation.

101 Power to resolve transitional difficulties in proceeding

- (1) If any difficulty arises because of the operation of this Act in relation to a proceeding to which this Part applies, a Court or VCAT may make any order it considers appropriate to resolve the difficulty.
- (2) An order made under subsection (1)—
 - (a) may be made on application of a party to the proceeding or on the Court's or VCAT's own motion, as the case requires; and
 - (b) has effect despite any provision to the contrary made by or under any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**).

PART 13—CONSEQUENTIAL AMENDMENTS

Division 1—Amendment of Supreme Court Act 1986

102 Vexatious litigants

Section 21 of the **Supreme Court Act 1986** is repealed.

103 Power to make Rules

After section 25(1)(af) of the **Supreme Court Act 1986** insert—

"(ag) any matter or thing required or permitted by or under the **Vexatious Proceedings Act 2014** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;"

Division 2—Amendment of County Court Act 1958

104 Power to make rules of practice

After section 78(1)(da) of the **County Court Act 1958** insert—

"(db) any matter or thing required or permitted by or under the **Vexatious Proceedings Act 2014** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;"

Division 3—Amendment of Magistrates' Court Act 1989

105 Jurisdiction of Family Violence Court Division

After section 4I(1)(a) of the **Magistrates' Court Act 1989** insert—

"(ab) proceedings under the **Vexatious Proceedings Act 2014** in relation to intervention order legislation within the meaning of that Act;"

106 Jurisdiction of Neighbourhood Justice Division

In section 4O(3) of the **Magistrates' Court Act 1989**—

- (a) in paragraph (e) for "2008." substitute "2008; and";
- (b) after paragraph (e) insert—
 - "(f) the jurisdiction of the Court given by the **Vexatious Proceedings Act 2014** in relation to intervention order legislation within the meaning of that Act."

107 Rules of Court

After section 16(1)(ca) of the **Magistrates' Court Act 1989** insert—

- "(cb) any matter or thing required or permitted by or under the **Vexatious Proceedings Act 2014** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;".

Division 4—Amendment of Victorian Civil and Administrative Tribunal Act 1998

108 Subject matter for rules

At the end of Schedule 2 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"Procedure under the **Vexatious Proceedings Act 2014**."

Division 5—Amendment of Children, Youth and Families Act 2005

109 Jurisdiction of Family Division

In section 515(2) of the **Children, Youth and Families Act 2005**, after "Personal Safety Intervention Orders Act 2010" insert "or by the

Vexatious Proceedings Act 2014 in relation to intervention order legislation within the meaning of that Act".

110 Jurisdiction of Neighbourhood Justice Division

In section 520C(4) of the **Children, Youth and Families Act 2005**—

- (a) in paragraph (d) for "2010." substitute "2010; and";
- (b) after paragraph (d) insert—
 - "(e) the jurisdiction of the Court given by the **Vexatious Proceedings Act 2014** in relation to intervention order legislation within the meaning of that Act."

111 Restriction on publication of proceedings

After section 534(5) of the **Children, Youth and Families Act 2005** insert—

- "(6) Subsection (1) does not apply to the publication under section 85 of the **Vexatious Proceedings Act 2014** by the Attorney-General of a copy of an order that relates to intervention order legislation within the meaning of that Act."

112 Rules

After section 588(1AB) of the **Children, Youth and Families Act 2005** insert—

- "(1AC) The President together with 2 or more magistrates for the Court may jointly make Rules for or with respect to any matter or thing required or permitted by or under the **Vexatious Proceedings Act 2014** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act."

113 Practice notes

- (1) After section 592(1) of the **Children, Youth and Families Act 2005** insert—

"(1A) The President may from time to time issue practice directions, statements or notes for the Court in relation to proceedings in the Court under the **Vexatious Proceedings Act 2014**".

- (2) In section 592(2) of the **Children, Youth and Families Act 2005**, after "subsection (1)" insert "or (1A)".

Division 6—Amendment of Family Violence Protection Act 2008

114 Definitions

In section 4 of the **Family Violence Protection Act 2008** insert the following definitions—

"acting in concert order" means an order made under section 36 of the **Vexatious Proceedings Act 2014**;

extended litigation restraint order means an order made under section 19 of the **Vexatious Proceedings Act 2014**;

litigation restraint order proceeding means a proceeding under the **Vexatious Proceedings Act 2014** in relation to any of the following orders, if the order relates to an application or a proceeding under this Act—

- (a) an extended litigation restraint order;
- (b) an acting in concert order;
- (c) an appeal restriction order within the meaning of that Act;
- (d) an order varying or revoking an extended litigation restraint order;

- (e) a variation or revocation application prevention order within the meaning of that Act;"

115 Evidence given by children

In section 67(1) of the **Family Violence Protection Act 2008**, after "under this Act" insert "or a litigation restraint order proceeding".

116 Court may close proceeding to public

In section 68(1) of the **Family Violence Protection Act 2008**, after "under this Act" insert "or a litigation restraint order proceeding".

117 Alternative arrangements for proceeding

In section 69(1) of the **Family Violence Protection Act 2008**, after "family violence intervention order" insert "or a litigation restraint order proceeding".

118 Special rules for cross-examination of protected witnesses

In section 70(1) of the **Family Violence Protection Act 2008**, after "under this Act" insert "or a litigation restraint order proceeding".

119 Who may appeal

In section 114(2) of the **Family Violence Protection Act 2008**—

- (a) in paragraph (b), for "section; and" substitute "section.";
- (b) paragraphs (c) and (d) are **repealed**.

120 Rehearing of certain proceeding

- (1) In section 122(1) of the **Family Violence Protection Act 2008**, for "A relevant person" substitute "The respondent for a final order".

- (2) In section 122(3) of the **Family Violence Protection Act 2008** omit "or order declaring a person to be a vexatious litigant".
- (3) Section 122(5) of the **Family Violence Protection Act 2008** is repealed.

121 Restriction on presence of children

In section 150(1) of the **Family Violence Protection Act 2008**, after "under this Act" insert "or during a litigation restraint order proceeding".

122 Costs

For section 154(2) of the **Family Violence Protection Act 2008** substitute—

- "(2) In a litigation restraint order proceeding—
- (a) if a person is made subject to an extended litigation restraint order or an acting in concert order, that person must bear the costs of the proceeding, other than the Attorney-General's costs if the Attorney-General is a party to the proceeding; and
 - (b) if a person is not made subject to an extended litigation restraint order or an acting in concert order, each party must bear the party's own costs."

123 Restriction on publication of proceeding in Magistrates' Court

In section 166(1) of the **Family Violence Protection Act 2008**—

- (a) in paragraph (b), for "Court." substitute "Court; or";
- (b) after paragraph (b) insert—

"(c) a litigation restraint order proceeding in the Magistrates' Court; or

- (d) an order made by the Magistrates' Court under the **Vexatious Proceedings Act 2014** that relates to an application or a proceeding under this Act."

124 Exception to restriction on publication

For section 167(b) of the **Family Violence Protection Act 2008** substitute—

- "(b) the publication under section 85 of the **Vexatious Proceedings Act 2014** by the Attorney-General of a copy of an order that relates to an application or a proceeding under this Act."

125 Repeal of Part 11

Part 11 of the **Family Violence Protection Act 2008** is repealed.

Division 7—Amendment of Personal Safety Intervention Orders Act 2010

126 Definitions

In section 4 of the **Personal Safety Intervention Orders Act 2010** insert the following definitions—

"acting in concert order means an order made under section 36 of the **Vexatious Proceedings Act 2014**;

extended litigation restraint order means an order made under section 19 of the **Vexatious Proceedings Act 2014**;

litigation restraint order proceeding means a proceeding under the **Vexatious Proceedings Act 2014** in relation to any of the following orders, if the order relates to an application or a proceeding under this Act—

- (a) an extended litigation restraint order;

- (b) an acting in concert order;
- (c) an appeal restriction order within the meaning of that Act;
- (d) an order varying or revoking an extended litigation restraint order;
- (e) a variation or revocation application prevention order within the meaning of that Act;"

127 Evidence given by children

In section 49(1) of the **Personal Safety Intervention Orders Act 2010**, after "under this Act" **insert** "or a litigation restraint order proceeding".

128 Court may close proceeding to public

In section 51(1) of the **Personal Safety Intervention Orders Act 2010**, after "under this Act" **insert** "or a litigation restraint order proceeding".

129 Alternative arrangements for proceeding

In section 52(1) of the **Personal Safety Intervention Orders Act 2010**, after "personal safety intervention order" **insert** "or a litigation restraint order proceeding".

130 Who may appeal

For section 91(2) of the **Personal Safety Intervention Orders Act 2010** **substitute—**

- "(2) Despite subsection (1), an appeal against an order referred to in section 95 may be made only with the consent of the relevant person under that section."

131 Rehearing of certain proceeding

- (1) In section 99(1) of the **Personal Safety Intervention Orders Act 2010**, for "A relevant person" substitute "The respondent for a final order".
- (2) In section 99(3) of the **Personal Safety Intervention Orders Act 2010** omit "or order declaring a person to be a vexatious litigant".
- (3) Section 99(5) of the **Personal Safety Intervention Orders Act 2010** is repealed.

132 Restriction on presence of children

In section 107(1) of the **Personal Safety Intervention Orders Act 2010**, after "under this Act" insert "or during a litigation restraint order proceeding".

133 Costs

For section 111(2) of the **Personal Safety Intervention Orders Act 2010** substitute—

- "(2) In a litigation restraint order proceeding—
- (a) if a person is made subject to an extended litigation restraint order or an acting in concert order, that person must bear the costs of the proceeding, other than the Attorney-General's costs if the Attorney-General is a party to the proceeding; and
 - (b) if a person is not made subject to an extended litigation restraint order or an acting in concert order, each party must bear the party's own costs."

134 Restriction on publication of proceeding in Magistrates' Court

In section 123(1) of the **Personal Safety Intervention Orders Act 2010**—

- (a) in paragraph (b), for "Court." **substitute** "Court;";
- (b) after paragraph (b) **insert**—
 - "(c) a litigation restraint order proceeding in the Magistrates' Court; or
 - (d) an order made by the Magistrates' Court under the **Vexatious Proceedings Act 2014** that relates to an application or a proceeding under this Act."

135 Exception to restriction on publication

In section 124 of the **Personal Safety Intervention Orders Act 2010**, for paragraph (b) **substitute**—

- "(b) the publication under section 85 of the **Vexatious Proceedings Act 2014** by the Attorney-General of a copy of an order that relates to an application or a proceeding under this Act."

136 Repeal of Part 10

Part 10 of the **Personal Safety Intervention Orders Act 2010** is repealed.

137 Repeal of Part

This Part is **repealed** on 31 October 2015.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 19 February 2014

Legislative Council: 3 April 2014

The long title for the Bill for this Act was "A Bill for an Act to reform and consolidate the law relating to vexatious proceedings in courts and tribunals, to make consequential amendments to various Acts and for other purposes."