

Vexatious Litigants – What to do when Don Quixote comes after your windmills

One of the many frustrating scenarios faced by strata owners corporations, their executive committees and their lot owners is when a lot owner with a perceived grievance subjects them to seemingly endless litigation about trivial or non-existent issues or repeated litigation about the same issues. Such behaviour can amount to vexatious litigation, in which case the persons subjected to it may have legal rights.

Vexatious litigation can be particularly problematic in a strata context, as such owners:

- Often have personality disorders and possibly even mental health issues which lead to obsessive pursuit of the perceived grievances and inability to resolve those grievances by constructive means.
- Are typically self represented and not concerned about incurring substantial legal costs.
- Can cause owners corporations, executive committee members, lot owners and strata managing agents substantial legal costs defending themselves against multiple legal actions and appeals against adverse decisions in those actions. Further, it is common for vexatious litigants to continue after being made bankrupt and losing capacity to satisfy costs orders made against them.

However, there are options open to persons who have been subjected to such behaviour. In particular:

- Most courts and tribunals have power to deal with spurious proceedings, including power to dismiss or stay proceedings and make adverse costs orders.
- The Vexatious Proceedings Act 2008 permits the Supreme Court, the Land and Environment Court and the Industrial Court to make various orders, including orders staying existing vexatious proceedings and prohibiting future vexatious proceedings. There is a register of persons in relation to whom such orders have already been made. [Register](#)

The main requirements for such an order are as follows:

- The person seeking the order must be eligible to do so. The Court can make an order of its own motion and the Attorney General or Solicitor General can apply for such an order. A person against whom vexatious proceedings have been brought can apply for such an order and that is the most common scenario. The Court can also grant leave to apply to a person whom the Court considers has sufficient interest in the matter and that may well be the case where an Owners Corporation proposes to seek an order preventing further vexatious proceedings against lot owners.
- The person against whom the order is made must have frequently instituted or conducted vexatious proceedings or be acting in concert with someone against whom an order has already been made. The frequency required is unclear, but persons against whom such orders have been made have typically instituted a large number of actions over a period of years. The concept of "vexatious" is also complex,

but essentially involves abuse of the process of the relevant court or tribunal, which in turn involves proceedings instituted or conducted without reasonable ground, to harass or annoy or achieve some other wrongful purpose. Typically, such proceedings involve a baseless action brought for the purpose of coercing someone to take action which they are not legally required to take or for the purpose of creating a forum for promoting the political or other views of the person.

If you have been subjected to such behaviour, you should obtain legal advice. We have experience in this area and can assist.

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