**NSW SUPREME COURT CONFERENCE – 30 AUGUST 2025**

# VEXATIOUS LITIGANTS: PROCEEDINGS UNDER THE *VEXATIOUS PROCEEDINGS ACT 2008* AND SOME OTHER POSSIBLE OPTIONS

**JUSTICE J K KIRK**

This paper seeks to give a brief overview of orders that may be made with respect to vexatious litigants, in particular under the *Vexatious Proceedings Act 2008* (NSW) (**VP Act**), but also in some other ways.

The Supreme Court may make a "vexatious proceedings order" (**VPO**) in relation to a person which has effect in relation to all proceedings in NSW courts or tribunals. The Land and Environment Court and the Industrial Court[1] are empowered to make similar orders, although they are only able to restrict litigation instigated in their own forum.[2] The purpose of the statutory power "is not to punish the litigant for past misdeeds" but to "shield other litigants from harassment and to protect the Court itself from the expense, burden and inconvenience of baseless and repetitious suits".[3]

In the past three years the Court of Appeal has decided seven cases (delivering eight judgments)[4] concerning VPOs, by way of appeals, applications to set aside earlier VPOs, and orders made by the Court of its own motion. In all but one case the litigant in question was a self-represented individual (the exception being *Riva*).

In what follows I address the following topics:

1. procedural points with respect to making a VPO;

2. determining whether such an order can be made;

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[1] VP Act s 3: "***authorised court*** means any of the following courts— (a) the Supreme Court, (b) the Land and Environment Court, (c) the Industrial Court."

[2] See VP Act s 8(8) and (8A).

[3] *Teoh v Hunters Hill Council (No 8)* [2014] NSWCA 125 at [56] (***Teah (No 8)***).

[4] In chronological order:

- *Quach v New South Wales Civil and Administrative Tribunal (No 2)* [2022] NSWCA 177 (***Quach 2022***)
- ***Riva*** *NSW Pty Limited v Official Trustee in Bankruptcy* [2023] NSWCA 235
- *Macatangay v State of New South Wales* [2023] NSWCA 238 (***Macatangay 2023***)
- ***Collier*** *v Attorney General (NSW)* [2023] NSWCA 273
- *Proietti v Proietti* [2024] NSWCA 48 (***Proietti 2024***)
- ***Arjunan*** *v Neighbourhood Association DP No 285853* [2024] NSWCA 123
- *Proietti v Proietti* [2025] NSWCA 11 (***Proietti 2025***)
- *Golden v Howard* [2025] NSWCA 117 (***Golden 2025***)

3. the nature and extent of the order;

4. consequences; and

5. some other possible options.

## 1. PROCEDURAL POINTS

The following persons can seek a VPO: the Attorney General, the Solicitor General, the Prothonotary (in the Supreme Court),[5] the person subject to proceedings said to be vexatious, or a person whom the court considers to have a sufficient interest (with leave).[6]

A judge, tribunal member or registrar may make a recommendation to the Attorney General that the Attorney consider making an application for a VPO.[7] That process can take some time, and thus may not be suitable if the litigant in question is engaging in a quick series of litigious steps.

The Supreme Court has power to make a VPO of its own motion.[8] *Proietti 2024* and *Arjunan* are recent examples where this was done in the Court of Appeal. It was also done in the *Macatangay*, *Teoh* and *Quach* litigation.[9]

If proceeding in that way it may be thought desirable to have a contradictor if possible to act as proponent for such an order.

In the *Proietti* matter Ward P relevantly made the following orders:[10]

> 1. List the matter for hearing on 22 February 2024 before a court to be constituted in due course to hear and consider of its own motion whether there should be an order made declaring Mr Proietti a vexatious litigant. …
>
> 3. Direct that the Registrar contact the Pro Bono Panel to seek the assistance on a pro bono basis of an amicus curiae to assist the Court in making submissions in relation to the vexatious application. …
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> 5. Note that the trustees for sale do not intend to appear on that application.

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[5] VP Act s 8(4)(c) provides that the court may make a VP order on the application of "the appropriate registrar for the court". Section 3 defines an "appropriate registrar" in relation to the Supreme Court as the Prothonotary of the Supreme Court.

[6] VP Act s 8(4)(a)-(e). See also s 8(5): "An application for a [VPO] may be made by a person referred to in subsection (4)(e) only with the leave of the authorised court".

[7] VP Act s 8(6).

[8] Section 8(4).

[9] *Macatangay v New South Wales* [2012] NSWCA 374 (***Macatangay 2012***); *Teoh (No 8)*; *Quach v New South Wales Health Care Complaints Commission; Quach v New South Wales Civil and Administrative Tribunal* [2017] NSWCA 267 (***Quach 2017***).

[10] See *Proietti 2024* at [92].

Counsel appointed by the Bar Association appeared to play the role of proponent for a VPO.

In *Arjunan* the other party, the Neighbourhood Association, appeared and made submissions in support of a VPO being made, so it was not necessary to seek a contradictor. By way of background, the Neighbourhood Association had previously obtained a *Teoh* direction (as explained below) against Mr Arjunan and Ms Kannapiran.[11] Mr Arjunan and Ms Kannapiran subsequently initiated several more proceedings to challenge that direction, amongst other orders made by the court.

It is implicit in the possibility that the court may act of its own motion that a proponent of the order is not necessary, even if desirable. In the *Macatangay 2012* and *Quach 2017* litigation, for example, the Court of Appeal directed that the litigant show cause why a VPO should not be made, and in *Teoh* that possibility was raised by a letter from the Registrar in the context of an application being made by the litigant. In each case a VPO was made in due course without any party or amicus appearing.

A VPO must not be made without giving the person an opportunity to be heard (s 8(3)). The court may provide an opportunity for the person to seek legal advice, if they had not been represented.[12]

It is not necessarily the case that an oral hearing must be held, depending on all the circumstances, although in general such a hearing would be expected. In *Macatangay 2023* the opportunity to file written submissions was held (subsequently) to have sufficed in circumstances where the litigant had not sought an oral hearing.[13]

## 2. Determining whether a VPO can be made

Pursuant to s 8(1) of the VP Act, a VPO may be made if the court is satisfied that the person in question has frequently instituted or conducted vexatious proceedings in Australia, or has instituted or conducted vexatious proceedings in Australia in concert with such a person or with a person who is subject to a VPO. Regard may be had to proceedings instituted or conducted in, orders made by, and evidence of the decision or a finding of fact of, any Australian court or tribunal, and s 91 of the *Evidence Act 1995* (NSW) does not prevent evidence of the decision or a finding of fact being admitted (s 8(2)).

In the usual case where no issue of acting in concert is involved, consideration of whether to make a VPO involves four steps:[14]

(1) identify the “proceedings” the subject of the application which are said to be vexatious;

(2) determine which, if any, of those proceedings is vexatious within the meaning of s 6 of the VP Act;

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[11] See [56]-[61].

[12] Eg *Arjunan* at [7].

[13] See at [20].

[14] *Collier* at [45]; *Proietti 2024* at [25]; *Arjunan* at [13] and [84]; *Golden 2025* at [35].

(3) determine whether the person has "frequently" instituted or conducted vexatious proceedings in Australia within the meaning of s 8(1) of the VP Act;

(4) determine the manner in which the discretion granted by s 8 is to be exercised (if at all).

As is implicit in the identification of these steps, it is not sufficient to reach a generic conclusion that the person has frequently instituted or conducted vexatious proceedings.[15] There must be a reasoned consideration of whether particular proceedings were vexatious, whether these suffice to be characterised as "frequent", and consideration then of whether and what order should be made.

As to the first step, the term "proceedings" is defined in s 4. It is a broad concept. Because of the encompassing definition it is possible that a number of "proceedings" may arise within the context of one case, for example if there are several interlocutory applications.[16]

The first and second steps are commonly addressed together, insofar as the question is whether particular identified proceedings should be characterised as vexatious.

As to the second step, s 6 provides four overlapping,[17] inclusive categories of "vexatious proceedings", being those that are:

1. an abuse of process;

2. instituted for a wrongful purpose (including to harass, annoy, or cause delay or detriment);

3. instituted or pursued without reasonable ground; and

4. conducted to achieve a wrongful purpose or in a way that harasses, unreasonably annoys, or causes delays or detriment, regardless of subjective intention.

These categories involve objective characterisation.[18] The notion of "abuse of process" invokes the body of case law dealing with that topic, including with respect to repeated interlocutory applications seeking the same relief.[19]

Sometimes the court or tribunal which determined the proceedings in question has itself characterised the proceedings as abusive or vexatious (etc). Any such characterisation will commonly be of assistance, although it is for the court considering the VPO application to reach its own view.[20]

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[15] ***Viavattene*** *v Attorney General* (NSW) [2015] NSWCA 44 at [43]-[44] and [63]-[72]; *Zepinic v Chateau Constructions (Aust) Ltd* [2018] NSWCA 317 at [17]; *Proietti 2024* at [108]-[109].

[16] *Collier* at [43]; see further *Proietti 2024* at [10] and *Golden 2025* at [25].

[17] *Collier* at [55].

[18] See *Collier* at [56]-[59].

[19] *Proietti 2024* at [12]-[15].

[20] *Teoh (No 8)* at [50].

A common example of vexatious proceedings is re-agitation of arguments already made and rejected by the Court; for example:

- *Proietti 2024*: repetition of arguments that were "plainly bound to fail", pursued "without reasonable grounds", and already rejected multiple times.[21]

- *Arjunan*: attempt to "litigate anew matters that already had, or could have been, litigated in the earlier decisions".[22]

Conducting proceedings in a rude and offensive manner can be vexatious if doing so harasses or causes unreasonable annoyance, delay or detriment.[23]

The third step concerns frequency. That has been said to set a "relatively low threshold",[24] which involves not merely an arithmetic calculation[25] but consideration of the nature of the vexatious proceedings (involving "both the quality of the vexatiousness of a proceeding, and the nature of the proceeding itself").[26] The proportion of the litigant's proceedings which are vexatious is not relevant to the frequency threshold but is relevant to the exercise of discretion.[27]

In *Proietti 2024*, by way of example, five vexatious proceedings commenced in a 7-month period were held to satisfy the frequency requirement.[28] In *Arjunan*, there were also five vexatious proceedings in the form of five motions: one in the Supreme Court filed in November 2022 seeking to set aside an earlier judgment, and four filed in the Court of Appeal in the period June 2023 to January 2024 seeking to overturn earlier orders of that Court.

The fourth step is the exercise of the court's discretion, which leads to the next topic.

## 3. THE NATURE AND EXTENT OF A VPO

An authorised court has a discretion both as to whether to make a VPO and as to the terms of any such order.[29] The *House v The King* standard applies in the appellate review of this discretionary exercise of power.[30]

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[21] At [109]-[113].

[22] At [76].

[23] *Collier* at [72].

[24] ***Potier*** *v Attorney General in and for the State of New South Wales* (2015) 89 NSWLR 284; [2015] NSWCA 129 at [118].

[25] *Viavattene* at [49].

[26] *Potier* at [116]; see further eg *Proietti 2024* at [18]-[20] and [114]; *Arjunan* at [14]; *Golden 2025* at [101].

[27] *Potier* at [119]-[120]; *Proietti 2024* at [19].

[28] At [114].

[29] See *Collier* at [51].

[30] *Potier* at [127]; *Collier* at [53].

Section 8(7) of the VP Act provides that the Supreme Court may make the following types of VPO in relation to a person:

- staying all or part of any proceedings in New South Wales already instituted by the person;

- prohibiting the person from instituting proceedings in New South Wales;

- any other order that the Court considers appropriate in relation to the person.

Given the seriousness of restricting a person's access to the courts, the court "should exercise restraint when considering the scope of a [VPO], recognising the important principle of open access to justice", and any limitation on access should be "to no greater extent than is proportionate to the needs of the particular case".[31] That being said, it is relevant that a VPO is not a complete bar on a person instituting proceedings; rather, it imposes a preliminary requirement to obtain leave (as discussed below).[32]

Consideration should be given to limiting any VPO to a particular time period, and by reference to some particular subject matter and/or forum.

As was observed in *Potier*, "[i]n some cases vexatious litigation has arisen from an identifiable cause, which is likely to have a limited lifespan", and it will commonly be appropriate to impose a temporal limit, especially as a VPO can always be extended should the need arise.[33] That being said, none of the orders in the recent vexatious proceedings cases in the Court of Appeal had a temporal limit, although those decisions did address whether or not there should be such a limit.

It is common for an order to have a subject matter limitation and/or one relating to a particular court or tribunal. Having such a limit may reduce any imperative to impose a time limit. Not uncommonly the litigant in question will have a particular grievance against a particular person or a confined group and it will be sufficient to prohibit them from instituting proceedings against that person/group and/or on that subject matter. Examples of orders made include the following:

- In the *Quach* litigation, the order prohibited Mr Quach from instituting further proceedings in New South Wales relating to "the subject matter of proceedings 1420086 and 1420065 in the New South Wales Civil and Administrative Tribunal (NCAT) (entitled 'Health Care Complaints Commission v Quach') or relating to proceedings 2015/158685, 2015/67618 and 2015/48269 in the New South Wales Court of Appeal".

- In *Riva*, the order prohibited Mr Ferella from "instituting or conducting any proceedings against the Official Trustee in Bankruptcy, in his own name, or in the names of Gustavo Ferella or [an identified company]".

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[31] See *Proietti 2024* at [22], citing *Potier* at [17].

[32] *Collier* at [61]; *Proietti 2024* at [24].

[33] *Potier* at [18]. As to variations or reinstatement, see ss 9 and 10.

- In *Macatangay*, the orders were phrased by reference to particular matters already on foot at the time:

> (a) all proceedings in New South Wales already instituted by the applicant in matters Nos 20144 of 2005 and 269316 of 2005 ("the Matters") be stayed; and
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> (b) the applicant be prohibited from instituting any further proceedings in New South Wales relating to any of the claims or complaints made by her in the Matters.

- In *Golden* it was ordered that "without leave of the Court, the plaintiff, Joseph Golden, is prohibited from instituting proceedings in New South Wales, which arise from allegations concerning a scheme known as the 'Commercial Horse Assistance Payment Scheme' or 'CHAPS', or arising from the same or similar facts as those alleged in these proceedings or in any of the following Supreme Court of NSW proceedings, namely proceedings number …".

- In *Proietti*, the Court ordered that "Mr Philip Proietti is prohibited from instituting proceedings in the Supreme Court of New South Wales including in the Court of Appeal against Mr Peter Proietti or the trustees for sale appointed by Kunc J in respect of the matters litigated in *Proietti v Proietti* [2022] NSWSC 875, the appeal therefrom (*Proietti v Proietti* [2022] NSWCA 234) and the following sets of proceedings …". A list of case references ensued.

- Similarly in *Arjunan* the Court ordered that "Mr Kannapiran Chinna Arjunan and Ms Thangam Kannapiran are prohibited from instituting proceedings in the Supreme Court of New South Wales including in the Court of Appeal against the Neighbourhood Association DP No 285853 or its managing agent, O'Connors Strata & Property Specialists Pty Ltd, in respect of the matters litigated in …" – followed by a list of case references.

There are exceptions. In *Collier* the order was framed in terms not limited by time or subject matter or forum, simply ordering that: "Mrs Marion Louise Collier be prohibited from instituting proceedings in New South Wales, without leave of this Court". That order was made on the basis that "Mrs Collier has litigated vexatiously across various courts and tribunals over a period in excess of 25 years".[34] She described her own litigious claims in this way: "not being what one would call a 'Wall Flower', thus regularly puts her head above the trenches and tries to right wrongs when caused to her".[35]

In some cases a VPO has been expressed as a prohibition on commencing proceedings "without leave of the Court" or "without leave of *this* Court". That type of qualification should be avoided.[36] The leave requirements arise as part of the careful statutory scheme and do not need to be addressed in the order (see below). To include that phrase might be taken to suggest that there is some possibility of seeking the court's leave which is additional to that set out in the statutory scheme, and/or that leave must be sought from the particular court

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[34] At [82].

[35] See at [75].

[36] *Collier* at [78]-[81].

which made the order (where in some circumstances it could be sought in the two other superior courts).

## 4. CONSEQUENCES

A VPO must be published by the Prothonotary in the Gazette within 14 days, and such orders are also published on the Supreme Court's website.[37]

A VPO can be varied or set aside, although the court may decline to consider an application to do so if not satisfied that it is materially different from an earlier such application.[38] Such an application "is not to be used as a means of ventilating a de facto appeal from such an order",[39] and will generally require a material change of circumstances to be established.[40] These restraints may not deter some litigants. Mr Quach made five applications to set aside the VPO made against him.[41]

A VPO does not prevent the person seeking to appeal from the making of that order, although leave to appeal is required.[42]

The main effect of a VPO is that if the person institutes proceedings in contravention of the order (whether by themselves or in concert with another person) then those proceedings are subject to an automatic stay (s 13(2)), and are taken to be dismissed after 28 days subject to any particular orders the court or tribunal makes (s 13(3)-(5)).

The person can seek leave from an appropriate authorised court to institute proceedings despite the VPO (s 14). The appropriate court is the one that made the VPO or, if relevant, the Land and Environment Court or Industrial Court (s 12). The application must be supported by an affidavit addressing certain matters. The application and affidavit are not to be served on anyone unless the court so orders. The court must (under s 15) dismiss the application if it considers that the affidavit does not substantially comply with the requirements, or the proceedings are vexatious, or there is no prima facie ground for the proceedings, and this may be done without an oral hearing (and, implicitly, without the other party being notified). The court may decline to consider the application if not satisfied that it is materially different from an earlier application which was dismissed under s 15(1)(b)-(c).

If the court does not dismiss the application on one of those bases, then pursuant to s 16(a) the court is to order the applicant to serve each relevant person (being the respondent party, the Attorney General, the Solicitor General, the appropriate registrar if the VPO had been sought by a registrar, and anyone who applied for the VPO and whom the court considers should be served). The court may grant leave on conditions, but must only grant leave if satisfied that the proceedings are not vexatious and there are one or more prima facie grounds for the proceedings (s 16(4)).

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[37] VP Act s 11. See supremecourt.nsw.gov.au/practice-procedure/vexatious-proceedings.html

[38] VP Act s 9.

[39] *Proietti 2025* at [20].

[40] Ibid at [21]-[25].

[41] See *Quach 2022* at [9].

[42] See *Potier* at [47]-[49]; *Batterham v Nauer* [2020] NSWCA 204 at [8]; *Collier* at [5].

No appeal may be brought from a decision disposing of such applications (s 14(6)).

As regards criminal proceedings, a VPO does not stay or prohibit the person from instituting or conducting any criminal proceedings that are taken by the person in connection with or incidental to criminal proceedings against the person, except as expressly specified in the order (s 8(9)). Nor does it prevent the person from making a bail application (s 8(10)).

## 5. SOME OTHER POSSIBLE OPTIONS

When litigation involves repeated and potentially vexatious applications, there may be remedies available other than under the VP Act. Section 7 of that Act provides that the Act does not limit or affect any inherent jurisdiction or any powers to restrict vexatious proceedings. What follows are some examples of orders that have been made.

### Costs orders

Whilst the general purpose of awarding costs is to compensate a successful party and not to punish an unsuccessful applicant, a feature of the adversarial system is "the discipline imposed by the knowledge that an unsuccessful party is likely to be ordered to pay the costs of the successful party", which "provides a measure of protection to those involved in litigation, and to the Court itself, against unscrupulous attempts to manipulate the system".[43] The potential for costs orders can therefore play a role in deterring meritless interlocutory applications and the like. For some litigants, however, costs do not introduce any such discipline or protection, including because they are not likely to be paid in practice.

Rule 42.7(2) of the Uniform Civil Procedure Rules (**UCPR**) provides that interlocutory costs do not become payable until the conclusion of the proceedings, but subject to a power of the court to order otherwise. Section 98(4) of the *Civil Procedure Act 2005* (NSW) (**CPA**) enables a court to specify a gross sum instead of assessed costs. Section 67 of that Act empowers a court to stay proceedings.

An approach adopted in *Markisic v Department of Community Services NSW* [2006] NSWCA 106 involved the following:

1. the making of a costs order (with respect to costs thrown away from seeking an adjournment);

2. immediate gross sum quantification of the costs payable;

3. an order that an identified portion of the sum assessed be paid within a set time; and

4. an order that the proceedings be stayed until those sums have been paid.

Justice Giles declined to order that the whole of the costs be payable forthwith in light of the litigant's assertion that he was impecunious, but said this at [20]:

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[43] *Project 28 Pty Limited v Barr* [2005] NSWCA 240 at [112]; see also eg ***Rozenblit** v Vainer* (2018) 262 CLR 478; [2018] HCA 23 at [41]-[42].

> it seems to me that the Court should not do nothing, but should at least mark the necessity for acting "carefully in a measured way" by requiring payment forthwith of a sum which, while not stultifying the proceedings, will at least ensure that the claimant does not continue with the proceedings on the basis that, as an impecunious person, costs are not a factor in his consideration.

Such orders would only be made in a case with a history meriting such an order, taking account of the interests of justice in the case. The interests of justice may look both backwards and forwards.[44] Such orders bear some similarity to ordering security for costs (albeit in relation to costs already incurred), and similar considerations may arise. Importantly, Giles JA implicitly had concluded that the orders would not have the effect of stultifying the proceedings. I note that, according to LexisNexis, this case has not been cited since 2011.

In *Rosenblit* in 2018 the High Court overturned an order, made in connection with an amendment application, that proceedings be stayed until costs orders from two previous amendment applications were paid. A significant reason for doing so was that there was a less draconian option available, namely giving leave to amend on condition that costs thrown away by that amendment be paid.[45] A key consideration was the Court's acceptance that the order had the likely effect of ending the litigant's pursuit of his claim.[46] The High Court emphasised that the gravity of granting a stay requires a commensurately serious justification, and a stay should not be granted if there is another way to achieve justice.[47] However, the Court declined to limit the possible justifications to where the litigant had acted in a harassing manner or for a collateral purpose, with Kiefel CJ and Bell J referring to "any conduct which, when assessed overall, is considered sufficiently serious in its nature and effect to warrant the proceedings being brought to an end", and Gordon and Edelman JJ saying relevant grounds would include that the proceedings "are frivolous, vexatious or oppressive".[48] The Court also said it was necessary to consider the overriding purpose provisions (ie for NSW, ss 56-58 of the CPA).[49]

**Orders preventing further proceedings until costs are paid**

Rule 12.10 of the UCPR provides that if a party is liable to pay the costs of another party in relation to dismissal of earlier proceedings, and the party commences further proceedings against that other party on the same or substantially the same cause of action or for the same or substantially the same relief without having paid those costs, then the court may stay the further proceedings until those earlier costs are paid.

It has been held that the "inherent" powers of the Supreme Court extend to making an order precluding any further proceedings even being instituted, and in courts and tribunals beyond the Supreme Court, until a costs sum (usually quantified on a gross sum basis) has been paid. The authorities are discussed in *K Sheridan v Colin Biggers & Paisley* [2019] NSWSC 621 at [26]-[29], in which the following order was made:

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[44] See *Rozenblit* at [108].

[45] See at [34], [47], [72] and [104].

[46] See at [33], [46] and [106].

[47] At [30], [43], [47] and [66].

[48] Quotations from [27] and [72] respectively; see also Keane J at [39]-[42].

[49] At [23] and [73]-[76].

> The Plaintiff is restrained from commencing or continuing in any Court or Tribunal any proceedings against either the First Defendant or Second Defendant (other than by a claim in the nature of a defence, cross-claim or cross-summons) which arise from the same or similar facts as these proceedings without the leave of a Judge of the Supreme Court of New South Wales, unless and until the Plaintiff has paid in full the costs ordered in order 2 above.

A question arises as to whether the order should be construed as applying to courts and tribunals in other Australian jurisdictions and, if so, whether such an order could or should be made.[50] It may well be preferable for such orders to be expressed to apply with respect to proceedings in courts and tribunals in New South Wales.

Such an order does not, per se, prevent the litigant commencing similar proceedings against other parties, as the *Golden* litigation illustrated.[51]

**Orders preventing filing of further interlocutory applications**

A restrictive order with respect to interlocutory applications in the Court of Appeal was subsequently made in the *Markisic* proceeding. In *Markisic v Department of Community Services of NSW* [2007] NSWCA 30, Bryson JA said at [2]:

> There is a well-established practice of making orders restraining a litigant from bringing further interlocutory applications without first having obtained the leave of a judge. The powers and practices of the Court were considered and restated in *Wentworth v Graham & Anor* [2003] NSWCA 307; see particularly paras 6, 27 and 30. See too *Hillston v Bar-Mordecai* [2002] NSWSC 477 and cases there referred to. The basis of this practice is the inherent power of the Court to protect its process from abuse.

The orders made by his Honour (sitting alone) in that case were, relevantly:

> (1) Order that [the litigant] is not to be allowed to file and is hereby restrained from filing and also from serving any notice of motion, and is not to be allowed to make and is hereby restrained from making any oral application in these proceedings without the leave of a Judge of Appeal.
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> (2) Order that in case [the litigant] shall, without the leave of a Judge of Appeal file or serve any Notice of Motion, other parties are not to attend at the return of the notice of motion and they are not to participate in proceedings upon the Notice of Motion unless the Court or a Judge of Appeal shall otherwise direct; and further order that unless the Court shall think fit to give such direction any such Notice of Motion shall be dismissed without being heard.
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> (3) Leave pursuant to Order 1 is to be sought by written application setting out the full basis on which leave is sought and the full basis of the claim for relief with a copy of the proposed notice of motion. No oral hearing will take place on an application for

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[50] Cf *Wigmans v AMP Ltd* [2018] NSWSC 1118 at [15]-[19]; *Wileypark Pty Ltd v AMP Ltd* (2018) 265 FCR 1; [2018] FCAFC 143 at [10]-[12].

[51] Such an order was made in *Golden v Anderson & Ors (No 2)* [2023] NSWSC 339. As to Mr Golden's subsequent litigation, see *Golden 2025* at [43] and [89]-[99].

> leave, which will be determined without notice to other parties, unless the Judge otherwise directs.

**A *Teoh* direction**

To similar effect is a "*Teoh* direction", as is sometimes made in the Court of Appeal, along these lines:[52]

> The Registrar is directed, should the applicant file a further motion seeking, in substance, leave to appeal from the judgment of X to promptly vacate the return date, notify the parties, and refer the papers to a judge nominated by the President to determine, in Chambers, whether the Court should fix a new return date and notify the parties, or whether [the litigant] should be invited to show cause in writing why the Court should not, in Chambers, summarily dismiss the proceedings as vexatious and an abuse of process.

This procedure means that the other party may not be required to respond to such repeated applications.

A limit on the utility of this approach is that whilst it saves the resources of the other party, it still requires the court to determine whether the litigant should be permitted to proceed. Litigants may make repeated applications requiring determination; for example:

- Mr Quach made a series of such applications to the Court of Appeal in 2017, leading to it requiring him to show cause why a VPO should not be made.[53]

- Mr Proietti made three such applications before the Court moved of its own motion to consider making a VPO.[54]

- Mr Arjunan and Ms Kannapiran made two further applications before the Court raised the possibility of making a VPO of its own motion.[55]

- As regards Ms Teoh herself, a VPO was ultimately made, again after the Court raised the issue of its own motion.[56]

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[52] *Teoh v Hunters Hill Council (No 4)* (2011) 81 NSWLR 771; [2011] NSWCA 324; see further eg *Choi v Secretary, Department of Communities and Justice* [2022] NSWCA 170; (2022) 405 ALR 714 at [222]; *Proietti v Proietti* [2023] NSWCA 132; *Arjunan v Neighbourhood Association DP No 285853 (No 3)* [2023] NSWCA 266.

[53] See *Quach 2017* at [94]-[104].

[54] See *Proietti 2024* at [78]-[90].

[55] See *Arjunan* at [58]-[68].

[56] *Teoh (No 8)*, note at [7] and [13]-[15].

**Directions which avoid requiring a response from the other party**

If a litigant applies to re-open a judgment in a manner which appears as though it may be vexatious then orders of the following sort can be made in order to save expenditure of resources by the other party:[57]

> (1) Applicant to file and serve submissions of no more than # pages in relation to his/her motion filed on X date, along with any evidence he/she wishes to rely on, by Y date.
>
> (2) The applicant's motion is listed for directions before [eg the Registrar] on Z date, unless determined prior to that time on the papers.

If the court considers, in light of the applicant's submissions, that a response is called for then directions can be made providing for such and addressing whether an oral hearing will be held.

[57] See eg *Woolf v Brandt (No 3)* [2024] NSWCA 6 at [3]; *Woolf v Brandt (No 4)* [2024] NSWCA 47 at [3].