

Vexatious Proceedings Act 2014

A legislative guide

Civil Law Policy



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1 DEFINITIONS

1.1 Acronyms

The following acronyms are used in this legislative guide:

Acronym	Description
DOJ	Department of Justice
ELRO	Extended litigation restraint order
GLRO	General litigation restraint order
LLRO	Limited litigation restraint order
LRO	Litigation restraint order (which is the umbrella term for LLROs, ELROs and GLROs)
VCAT	Victorian Civil and Administrative Tribunal
VOCAT	Victims of Crime Assistance Tribunal
VP Act	<i>Vexatious Proceedings Act 2014 (Vic)</i>

1.2 Key definitions

The following are key definitions under the VP Act and are adopted in this legislative guide:

- 1) under section 4, a person is **‘acting in concert’** with another person if the first 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,
 but not if the first person is:
 - e. a legal practitioner acting for the other person, or
 - f. a litigation guardian of the other person, or
 - g. a professional advocate within the meaning of section 62(8) of the *VCAT Act 1998*, or
 - h. any other person authorised or required by law to act on behalf of the other person.
- 2) **‘Court’** is defined in section 3 to mean:
 - a. the Supreme Court
 - b. the County Court
 - c. the Magistrates’ Court
 - d. in relation to an order under the VP Act that relates to intervention order legislation, the Children’s Court.
- 3) **‘interlocutory application’** is defined in section 5 to mean any process by which an interlocutory proceedings is commenced in an Australian court or tribunal, including a subpoena but does not include certain specified applications under the intervention order legislation
- 4) **‘proceeding’** is defined in section 3 to mean 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 applications for judicial review or an application for leave to appeal
- 5) **‘vexatious application’** and **‘vexatious proceeding’** are defined in section 3 to include an interlocutory application or a proceeding:
 - a. that is abuse of the process of a court or tribunal

- b. made to harass or annoy, to cause delay or detriment, or for another wrongful purpose
 - c. commenced or pursued without reasonable grounds, or
 - d. conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose
- 6) **'vexatious proceeding order'** is defined in section 3 to mean 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, or
 - 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.
- 7) **'Victorian court or tribunal'** is defined in section 3 to mean 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.

2 INTRODUCTION

This legislative guide is a resource for judicial officers, tribunal members, registry staff, legal practitioners and other court users who are learning about the new regime provided for by the VP Act and/or who might seek to refer to the VP Act at some point in the future.

2.1 Background

2.1.1 Importance of regulating vexatious litigation

The effective management and control of vexatious litigation is fundamental to ensure an efficient and effective justice system and to provide protection to both the courts and the community. Without adequate controls, vexatious litigants can waste a considerable amount of court time, create backlog in the court system (which increases delays for meritorious matters), and force community members to unnecessarily spend time and incur costs in defending frivolous claims.

2.1.2 Parliamentary inquiry into vexatious litigants

In 2008, the Victorian Parliamentary Law Reform Committee (the Committee) conducted an inquiry into vexatious litigants. The Committee examined the effect of vexatious litigants on the justice system and the people who are sued by vexatious litigants. It found that, although small in number, vexatious litigants consume a disproportionate amount of court and tribunal time and resources, which creates delays in the courts and reduces access to justice for other members of the community with meritorious claims. The Committee also found that vexatious litigants can have a significant financial and emotional impact on the people they sue.¹

For example, one vexatious litigant brought 77 separate civil and criminal proceedings over an 11-year period. Many of these proceedings were private prosecutions attempting to summon grand juries to hear treason charges against judicial officers, government ministers and other public officials. Despite the fact that these allegations were completely lacking in substance, considerable court time was required to hear and ultimately dismiss the claims. This not only caused embarrassment, inconvenience and expense to those involved in the proceedings (who were required to spend time and money in contesting the baseless allegations), but it also created delays in the court system for other litigants with genuine claims.

2.1.3 Limitations of the former system

Victoria's former regime for dealing with vexatious litigants was set out in section 21 of the *Supreme Court Act 1986*.² That section allowed the Supreme Court to declare a person to be a vexatious litigant if they habitually, persistently and without reasonable grounds instituted vexatious proceedings against the same or different persons. A declared vexatious litigant was restrained from commencing new proceedings in Victorian courts and tribunals without first obtaining permission from the court (known as leave).

Section 21 was of limited utility in controlling vexatious behaviour. The Committee identified that:

- 1) the threshold for making an order was high, which made it difficult to have a person declared a vexatious litigant and reduced opportunities for early intervention to manage less serious vexatious behaviour
- 2) there were insufficient barriers in place to prevent a declared vexatious litigant from bringing further vexatious proceedings
- 3) courts and tribunals other than the Supreme Court had limited powers to control vexatious behaviour in their own jurisdictions
- 4) in deciding whether the threshold had been satisfied for the making of an order, the Supreme Court was generally unable to consider important matters, such as relevant proceedings in other Australian jurisdictions, interlocutory applications and appeals from such applications, or the manner in which proceedings had been conducted
- 5) there was a practical difficulty in seeking a vexatious litigant order as such orders could only be sought by the Attorney-General.

The Committee made a number of recommendations to overcome these limitations and to create a more effective framework for managing vexatious behaviour. Some of the Committee's

¹ Victorian Parliamentary Law Reform Committee, *Inquiry into Vexatious Litigants*, December 2008.

² Section 21 of the *Supreme Court Act 1986* is repealed by section 102 of the VP Act.

recommendations were based on the approach to managing vexatious litigants in England and Wales, including the tiered system of orders. Other recommendations drew on aspects of a Model Bill approved in 2004 by the then Standing Committee of Attorneys-General (Model Bill).

2.1.4 Other jurisdictions

New South Wales, Queensland, Tasmania, the Northern Territory and the Commonwealth have implemented the Model Bill, under which the superior courts of each jurisdiction can make an order restraining a person from commencing further litigation if satisfied that the person has frequently instituted or conducted vexatious proceedings in Australia.³ Similar legislation also exists in Western Australia.⁴

2.2 Overview of the VP Act

2.2.1 Summary

The VP Act implements a number of the Committee's recommendations and many aspects of the Model Bill. It introduces a comprehensive new regime for the management and prevention of vexatious litigation. Specifically, it provides a range of new powers for the Supreme, County, Magistrates' and Children's Courts and VCAT to manage vexatious behaviour more effectively and at an earlier stage.⁵

The main purpose of the VP Act is to reform and consolidate the law relating to vexatious proceedings in courts and tribunals in a way that balances several competing interests, including:

- ◆ the rights of individuals to access the courts⁶
- ◆ the rights of community members to be protected against repeated vexatious litigation⁷
- ◆ the public interest in an efficient and effective justice system and that promotes uniformity with other jurisdictions in the management and prevention of vexatious behaviour.⁸

The VP Act achieves this balance by giving the courts greater powers to restrict a person's ability to pursue vexatious litigation (which protects both the court system and the community), while at the same time preserving the litigant's access to the courts by allowing them to bring meritorious litigation.

The approach in the VP Act also ensures that court and tribunal resources can be allocated more fairly to the determination of meritorious cases, which will reduce delays and enhance access to justice for members of the community.

The VP Act aligns the existing regimes in relation to vexatious litigants under the *Family Violence Protection Act 2008* and the *Personal Safety Intervention Orders Act 2010* (the intervention order legislation) with the new regime. The VP Act makes specific provision for the Magistrates' Court and Children's Court to make orders in relation to vexatious litigation conducted under those Acts, which will ensure that a single framework for managing vexatious litigation operates across Victoria.⁹

2.2.2 Commencement

The commencement date for the VP Act is 31 October 2014.¹⁰

2.2.3 Application

The VP Act applies to all civil proceedings and all criminal proceedings in a Victorian court or tribunal.¹¹

2.2.4 Orders that can be made

Under the VP Act, the Courts and VCAT can make:

- 1) three types of 'litigation restraint order' (LRO):
 - a. a limited litigation restraint order (LLRO) under Part 2

³ *Vexatious Proceedings Act 2005* (Qld), *Vexatious Proceedings Act* (NT), *Vexatious Proceedings Act 2008* (NSW) and *Vexatious Proceedings Act 2011* (Tas). The *Access to Justice (Federal Jurisdiction) Amendment Act 2012* (Cth) implemented the Model Law federally by amending the *Family Law Act 1975* (Cth), the *Federal Court of Australia Act 1976* (Cth), the *Federal Magistrates Act 1999* (Cth) and the *Judiciary Act 1903* (Cth).

⁴ *Vexatious Proceedings Restriction Act 2002* (WA).

⁵ Minister's second reading speech, Legislative Assembly, 19 February 2014.

⁶ Section 1.

⁷ Minister's second reading speech, Legislative Assembly, 19 February 2014.

⁸ Section 1.

⁹ Minister's second reading speech, Legislative Assembly, 19 February 2014.

¹⁰ Section 2.

¹¹ Section 6(1).

- b. an extended litigation restraint order (ELRO) under Part 3
 - c. a general litigation restraint order (GLRO) under Part 4¹²
- 2) an acting in concert order under Part 5
 - 3) an appeal restriction order under Part 6
 - 4) an order granting leave to proceed under Part 8
 - 5) an order varying or revoking an LRO under Part 9.

Each of these orders is discussed in detail later in this guide.

VOCAT may also make certain orders under the VP Act.

Appendix 1 sets out a series of flowcharts explaining the processes involved in applying for orders under the VP Act.

Appendix 2 sets out the orders that each Victorian court or tribunal may make under the VP Act.

2.2.5 Effect on existing powers of courts and VCAT

The VP Act does not take away any existing powers of the courts or tribunals to control their own proceedings.¹³ For example, the courts may still bring contempt of court proceedings if appropriate, or summarily dismiss a proceeding that is vexatious or that has no real prospect of success.

However, to the extent that there is any inconsistency with the courts' current powers (other than the courts' inherent or implied powers) and the VP Act, the provisions of the Act will prevail to the extent of that inconsistency.¹⁴

¹² A GLRO can only be made by the Supreme Court of Victoria. See further, heading 5.

¹³ Sections 6(2) and 8.

¹⁴ Section 7.

3 LIMITED LITIGATION RESTRAINT ORDERS

Part 2 of the VP Act provides for the making of LLROs.

Appendix 1 contains a flowchart that sets out the procedure for applying for an LLRO.

3.1 What is the effect of an LLRO?

An LLRO may prevent a person from continuing or making further interlocutory applications or specified types of interlocutory applications in a particular proceeding without first obtaining leave of the court or VCAT to do so.¹⁵ The order lasts for the duration of the proceeding.¹⁶

The making of an LLRO does not affect the person's right to make applications in other proceedings or to continue or commence other proceedings.¹⁷

When an LLRO is made, any existing applications that would contravene the terms of the order are deemed to be stayed, and any new applications made in contravention of the order are deemed to be of no effect.¹⁸ This means that if there is an oversight and the application is allowed to be commenced in the court or VCAT, other parties are not required to take any steps to have the contravening application dismissed.

3.2 Who can apply for an LLRO?

The court or VCAT may make the LLRO in respect of a person who is a party to a proceeding in that court or VCAT (as the case requires) on its own motion or on the application of:

- 1) the Attorney-General¹⁹
- 2) if the person has made a vexatious application against another person, that other person, or
- 3) a person who has a sufficient interest in the matter.²⁰

Other than the Attorney-General, a person applying for an LLRO must seek leave of the court or VCAT in which the proceeding is being heard.²¹ The court or VCAT must not grant leave unless satisfied that there is merit in the application and that the granting of the application would not be an abuse of process.²²

3.3 When can an LLRO be made?

An LLRO can be made where a person has made two or more vexatious interlocutory applications in the relevant proceeding.²³ In making the order, the court or VCAT may take into account any matter it considers relevant including:

- 1) any interlocutory application made by the person, or an entity controlled by the person, in any Australian court or tribunal
- 2) the existence of any order made by an Australian court or tribunal against the person or an entity controlled by the person
- 3) any other matter relating to the way in which the person conducts or has conducted litigation.²⁴

The courts and VCAT must not make an LLRO without hearing the person who will be subject to the order, or giving them an opportunity to be heard.²⁵ The court or VCAT may order that submissions be made in writing or given at an oral hearing.²⁶

¹⁵ Section 12.

¹⁶ Section 15.

¹⁷ Section 14.

¹⁸ Section 13.

¹⁹ For the purposes of deciding whether to make an application for an LLRO against a person, the Attorney-General may request a Victorian court or tribunal to provide a copy of documents held by that court or tribunal in relation to an interlocutory application made or a proceeding commenced by the person. The court or tribunal is authorised by the VP Act to provide the Attorney-General with a copy of the requested documents: section 43.

²⁰ Sections 10(1) and 11(4).

²¹ Section 10(2).

²² Section 10(3).

²³ Section 11(1).

²⁴ Section 11(2).

²⁵ Section 45(1).

²⁶ Section 45(3).

4 EXTENDED LITIGATION RESTRAINT ORDERS

Part 3 of the VP Act provides for the making of ELROs.

There are two different types of ELROs that can be made under the VP Act, one of which is general in nature and one of which relates specifically to proceedings under the intervention order legislation. Only the Magistrates' Court and the Children's Court can make ELROs that relate to intervention order legislation.

Appendix 1 contains a flowchart that sets out the procedure for applying for an ELRO.

4.1 ELROs (general)

4.1.1 What is the effect of an ELRO (general)?

The first type of ELRO has the following features:

- 1) The order may prevent a person from continuing or commencing any legal proceedings against a specified person or other entity, or in relation to a specified matter, without first obtaining leave to do so.²⁷
- 2) Orders made by jurisdictions other than the Supreme Court only restrain proceedings in the jurisdiction that made the order.²⁸ For example, an order made by the County Court only restrains litigation in the County Court and does not affect the person's right to commence proceedings in other jurisdictions. However, orders made by the Supreme Court have a general application and restrain litigation in all Victorian courts and tribunals.²⁹
- 3) The order can be made where a person has frequently commenced or conducted vexatious proceedings against the specified person or other entity or in relation to the specified matter.³⁰
- 4) The order lasts for the period of time specified in the order, which can be indefinitely. The duration can also be extended.³¹
- 5) When an ELRO is made, any existing applications or proceedings that would contravene the terms of the order are deemed to be stayed, and any new applications made or proceedings commenced in contravention of the order are deemed to be of no effect.³² This means that if there is an oversight and the proceeding is allowed to be commenced in the court or VCAT, other parties are not required to take any steps to have the contravening proceeding dismissed.

4.1.2 Who can apply for an ELRO (general)?

The court or VCAT may make an ELRO in respect of a person on its own motion or on the application of:

- 1) the Attorney-General³³
- 2) if the person has commenced or conducted a vexatious proceeding against another person, that other person, or
- 3) a person who has a sufficient interest in the matter.³⁴

Other than the Attorney-General, a person applying for an ELRO must seek leave of the court or VCAT in which the order is sought.³⁵ The court or VCAT must not grant leave unless satisfied that there is merit in the application and that the granting of the application would not be an abuse of process.³⁶

4.1.3 When can an ELRO (general) be made?

An ELRO can be made where a person has frequently commenced or conducted vexatious proceedings against another person or other entity or in relation to a matter.³⁷ In making the order, the court or VCAT may take into account any matter it considers relevant including:

²⁷ Sections 20, 21, 22(1), and 24.

²⁸ Sections 21, 22(1), and 24.

²⁹ Section 20.

³⁰ Section 17(1).

³¹ Section 27.

³² Section 25.

³³ For the purposes of deciding whether to make an application for an ELRO against a person, the Attorney-General may request a Victorian court or tribunal to provide a copy of documents held by that court or tribunal in relation to an interlocutory application made or a proceeding commenced by the person. The court or tribunal is authorised by the VP Act to provide the Attorney-General with a copy of the requested documents: section 43.

³⁴ Sections 16(1) and 17(4).

³⁵ Section 16(2).

³⁶ Section 16(3).

- 1) a proceeding commenced or conducted by the person, or an entity controlled by the person, in any Australian court or tribunal
- 2) the existence of any order made by an Australian court or tribunal against the person or an entity controlled by the person
- 3) any other matter relating to the way in which the person conducts or has conducted litigation.³⁸

The courts and VCAT must not make an ELRO without hearing the person who will be subject to the order, or giving them an opportunity to be heard.³⁹ The court or VCAT may order that submissions be made in writing or given at an oral hearing.⁴⁰

4.2 ELROs (intervention order legislation)

4.2.1 What is the effect of an ELRO (intervention order legislation)?

The second type of ELRO, which relates to intervention order legislation, has the following features:

- 1) The order may prevent a person from continuing or commencing legal proceedings in the Magistrates' Court or the Children's Court under the intervention order legislation against a specified person or his or her child, or in relation to a specified matter, without leave.⁴¹
- 2) The order does not affect the person's right to commence proceedings under legislation other than the intervention order legislation or to commence proceedings in other jurisdictions.⁴²
- 3) The order can be made where a person has frequently commenced or conducted vexatious proceedings under the intervention order legislation against the specified person or in relation to the specified matter.⁴³ Proceedings conducted under legislation other than the intervention order legislation are not relevant to this order.
- 4) The order lasts for the period of time specified in the order, which can be indefinitely. The duration can also be extended.⁴⁴
- 5) When an ELRO is made, any existing applications or proceedings that would contravene the terms of the order are deemed to be stayed, and any new applications made or proceedings commenced in contravention of the order are deemed to be of no effect.⁴⁵ This means that if there is an oversight and the proceeding is allowed to be commenced, other parties are not required to take any steps to have the contravening proceeding dismissed.

4.2.2 Who can apply for an ELRO (intervention order legislation)?

The Magistrates' Court or Children's Court may make an ELRO that relates to intervention order legislation in respect of a person on its own motion or on the application of:

- 1) the Attorney-General⁴⁶
- 2) if the person has commenced or conducted a vexatious proceeding under intervention order legislation against another person, that other person, or
- 3) a person who has a sufficient interest in the matter.⁴⁷

Other than the Attorney-General, a person applying for an intervention order ELRO must seek leave of the Magistrates' Court or the Children's Court.⁴⁸ The court must not grant leave unless satisfied that there is merit in the application and that the granting of the application would not be an abuse of process.⁴⁹

³⁷ Section 17(1).

³⁸ Section 17(2).

³⁹ Section 45(1).

⁴⁰ Section 45(3).

⁴¹ Sections 22(2) and 23(1).

⁴² Section 26(4)(b) and (c).

⁴³ Section 19.

⁴⁴ Section 27.

⁴⁵ Section 25. Note that this provision is expressed to be subject to the terms of the ELRO.

⁴⁶ For the purposes of deciding whether to make an application for an ELRO against a person, the Attorney-General may request a Victorian court or tribunal to provide a copy of documents held by that court or tribunal in relation to an interlocutory application made or a proceeding commenced by the person. The court or tribunal is authorised by the VP Act to provide the Attorney-General with a copy of the requested documents: section 43.

⁴⁷ Section 18(1).

⁴⁸ Section 18(2).

⁴⁹ Section 18(3).

The Magistrates' Court or Children's Court must send a copy of an application for an ELRO that relates to intervention order legislation to the person who it is proposed will be protected by the order and the person who it is proposed will be subject to the order.⁵⁰

4.2.3 When can an ELRO (intervention order legislation) be made?

The Magistrates' Court or the Children's Court can make an intervention order ELRO where a person has frequently commenced or conducted vexatious proceedings under intervention order legislation against another person or other entity or in relation to a matter.⁵¹ In making the order, the Magistrates' Court or Children's Court may take into account any matter it considers relevant.⁵² The order must include a statement of reasons.⁵³

The Magistrates' Court or the Children's Court must not make an ELRO that relates to intervention order legislation without hearing the person who will be subject to the order and the person who will be protected by the order, or giving those persons an opportunity to be heard.⁵⁴ The court may order that submissions be made in writing or given at an oral hearing.⁵⁵

4.2.4 Finding out about the making of an ELRO (intervention order legislation)

Where the Magistrates' Court or Children's Court has made an ELRO that relates to intervention order legislation, that court must give a copy of the order to:

- 1) the person subject to the order
- 2) the person protected by the order
- 3) if the applicant is not the person protected by the order, the applicant.⁵⁶

⁵⁰ Section 44.

⁵¹ Section 19(1).

⁵² Section 19(2).

⁵³ Section 46.

⁵⁴ Section 45(2).

⁵⁵ Section 45(3).

⁵⁶ Section 49.

5 GENERAL LITIGATION RESTRAINT ORDERS

Part 4 of the VP Act provides for the making of GLROs.

Appendix 1 contains a flowchart that sets out the procedure for applying for a GLRO.

5.1 What is the effect of a GLRO?

A GLRO may prevent a person from continuing or commencing any legal proceedings in a Victorian court or tribunal without first obtaining leave to do so.⁵⁷

The order lasts for the period of time specified in the order, which can be indefinitely. The duration can also be extended.⁵⁸

When a GLRO is made, any existing applications or proceedings that would contravene the terms of the order are deemed to be stayed, and any new applications made or proceedings commenced in contravention of the order are deemed to be of no effect.⁵⁹ This means that if there is an oversight and a prohibited proceeding is allowed to be commenced in the court or VCAT, other parties are not required to take any steps to have the contravening proceeding dismissed.

5.2 Who can apply for a GLRO?

Only the Attorney-General can apply for a GLRO, although the Supreme Court may also make such an order on its own motion.⁶⁰

For the purposes of deciding whether to make an application for a GLRO against a person, the Attorney-General may request a Victorian court or tribunal to provide a copy of documents held by that court or tribunal in relation to an interlocutory application made or a proceeding commenced by the person. The court or tribunal is authorised by the VP Act to provide the Attorney-General with a copy of the requested documents.⁶¹

5.3 When can a GLRO be made?

A GLRO can be made only by the Supreme Court constituted by a judge of that court, and only where a person has persistently and without reasonable grounds commenced or conducted vexatious proceedings.⁶²

In making the order, the Supreme Court may take into account any matter it considers relevant including:

- 1) a proceeding commenced or conducted by the person, or an entity controlled by the person, in any Australian court or tribunal
- 2) the existence of any order made by an Australian court or tribunal against the person or an entity controlled by the person
- 3) any other matter relating to the way in which the person conducts or has conducted litigation.⁶³

The Supreme Court must not make a GLRO without hearing the person who will be subject to the order, or giving them an opportunity to be heard.⁶⁴ The Supreme Court may order that submissions be made in writing or given at an oral hearing.⁶⁵

⁵⁷ Section 30.

⁵⁸ Section 33.

⁵⁹ Section 32.

⁶⁰ Sections 28 and 29(4).

⁶¹ Section 43.

⁶² Section 29(1).

⁶³ Section 29(2).

⁶⁴ Section 45(1).

⁶⁵ Section 45(3).

6 ACTING IN CONCERT ORDERS

Part 5 of the VP Act provides for the making of acting in concert orders.

There are two types of acting in concert orders: one that can be made by the courts and VCAT generally, and one that can be made by the Magistrates' Court or Children's Court against a person who is acting in concert with a person who is subject to an ELRO that relates to intervention order legislation.

6.1 Acting in concert orders (general)

6.1.1 What is the effect of an acting in concert order (general)?

The courts and VCAT can make a range of orders against a person acting in concert with a person who is subject to an order made under the VP Act. This includes an order that the person is subject to an LLRO or an ELRO on the same terms as the person who is already subject to an LRO or on any other terms considered appropriate. The courts and VCAT may also strike out an interlocutory application made by the person, stay a proceeding commenced by the person or order the person to pay the costs of the relevant application or proceeding.⁶⁶

6.1.2 Who can apply for an acting in concert order (general)?

A court or VCAT may make an order in respect of a person who is acting in concert with a person who is subject to an LRO on its own motion or on the application of:

- 1) a person who applied for the LRO to which that other person is subject, or
- 2) a person named in an interlocutory application or a proceeding that, if made or commenced by the person who is subject to the LRO, would contravene the terms of that LRO.⁶⁷

6.1.3 When can an acting in concert order (general) be made?

A court or VCAT may make an order in respect of a person who is acting in concert with a person who is subject to an LRO if it is satisfied that:

- 1) the first mentioned person has made an interlocutory application or commenced a proceeding, and
- 2) the interlocutory application or proceeding, if made or commenced by the person who is subject to the LRO, would contravene the terms of that LRO.⁶⁸

The court or VCAT must not make an acting in concert order without hearing the person who will be subject to the order, or giving them an opportunity to be heard.⁶⁹ The court or VCAT may order that submissions be made in writing or given at an oral hearing.⁷⁰

6.2 Acting in concert orders (intervention order legislation)

6.2.1 What is the effect of an acting in concert order (intervention order legislation)?

The Magistrates' Court and Children's Court can make a range of orders against a person acting in concert with a second person who is subject to an ELRO that relates to intervention order legislation, including making an order that the first person is subject to an ELRO on the same terms as the second person.⁷¹

6.2.2 Who can apply for an acting in concert order (intervention order legislation)?

The Magistrates' Court and Children's Court may make an order in respect of a person who is acting in concert with a person who is subject to an ELRO that relates to intervention order legislation on its own motion or on the application of:

- 1) a person who applied for the ELRO to which that other person is subject, or

⁶⁶ Section 35(3).

⁶⁷ Sections 34 and 35(2).

⁶⁸ Section 35(1).

⁶⁹ Section 45(1).

⁷⁰ Section 45(3).

⁷¹ Section 36(3).

- 2) a person named in an interlocutory application or a proceeding that, if made or commenced by the person who is subject to the ELRO, would contravene the terms of that ELRO.⁷²

6.2.3 When can an acting in concert order (intervention order legislation) be made?

The Magistrates' Court and Children's Court may make an order in respect of a person who is acting in concert with a person who is subject to an ELRO that relates to intervention order legislation if it is satisfied that:

- 1) the first mentioned person has commenced a proceeding under intervention order legislation, and
- 2) the proceeding, if commenced by the person who is subject to the ELRO, would contravene the terms of that ELRO.⁷³

The Magistrates' Court or the Children's Court must not make an acting in concert order that relates to intervention order legislation without hearing the person who will be subject to the order and the person who will be protected by the order, or giving those persons an opportunity to be heard.⁷⁴ The court may order that submissions be made in writing or given at an oral hearing.⁷⁵

6.2.4 Finding out about the making of an acting in concert order (intervention order legislation)

Where the Magistrates' Court or Children's Court has made an acting in concert order that relates to intervention order legislation, that court must give a copy of the order to:

- 1) the person subject to the order
- 2) the person protected by the order
- 3) if the applicant is not the person protected by the order, the applicant.⁷⁶

⁷² Sections 34 and 36(2).

⁷³ Section 36(1).

⁷⁴ Section 45(2).

⁷⁵ Section 45(3).

⁷⁶ Section 49.

7 APPEAL RESTRICTION ORDERS

Part 6 of the VP Act provides for the making of appeal restriction orders.

There are two types of appeal restriction orders: one that can be made by the courts and VCAT generally, and one that can be made by the Magistrates' Court or Children's Court against a person who is subject to an ELRO that relates to intervention order legislation.

In both scenarios, an appeal restriction order made by a court or VCAT does not affect a person's right to make or continue another type of interlocutory application in a Victorian court or tribunal, or to commence or continue a proceeding in a Victorian court or tribunal (other than the appeal).⁷⁷

The order lasts for the duration specified in the order, which may be indefinitely. The duration can also be extended.⁷⁸

When an appeal restriction order is made, any existing applications for leave to appeal that would contravene the terms of the order are deemed to be stayed, and any new applications for leave to appeal made in contravention of the order are deemed to be of no effect.⁷⁹ This means that if there is an oversight and a prohibited application for leave to appeal is allowed to be commenced, other parties are not required to take any steps to have the contravening application dismissed.

7.1 Appeal restriction orders (general)

7.1.1 What is the effect of an appeal restriction order (general)?

Supreme Court

An appeal restriction order made by the Supreme Court may prevent a person subject to an LRO from appealing a decision by a Victorian court or tribunal to refuse the person leave to make or continue an interlocutory application or to commence or continue a proceeding.⁸⁰

Other courts and VCAT

An appeal restriction order made by the County Court, Magistrates' Court or VCAT may prevent a person subject to an LRO from appealing a decision by the relevant court or by VCAT to refuse leave to:

- 1) make or continue an interlocutory application in a proceeding in the relevant court or in VCAT (as the case requires), or
- 2) commence or continue a proceeding in the relevant court or in VCAT (as the case requires).⁸¹

7.1.2 When can an appeal restriction order (general) be made?

The order can be made where a person has frequently made vexatious applications seeking leave to bring new proceedings. The court or VCAT must also be satisfied that it is in the interests of justice to make the order.⁸²

The court or VCAT must not make an appeal restriction order without hearing the person who will be subject to the order, or giving them an opportunity to be heard.⁸³ The court or VCAT may order that submissions be made in writing or given at an oral hearing.⁸⁴

7.2 Appeal restriction orders (intervention order legislation)

7.2.1 What is the effect of an appeal restriction order (intervention order legislation)?

The Magistrates' Court or the Children's Court may make an appeal restriction order in respect of a person who is subject to an ELRO that relates to intervention order legislation. Such an order may prevent a person subject to the ELRO from appealing a decision of the relevant court to refuse the person leave to make or continue a proceeding in that court.⁸⁵

⁷⁷ Section 41.

⁷⁸ Section 42.

⁷⁹ Section 40.

⁸⁰ Section 37(2).

⁸¹ Section 38(2).

⁸² Sections 37(1) and 38(1).

⁸³ Section 45(1).

⁸⁴ Section 45(3).

⁸⁵ Section 39(2).

7.2.2 When can an appeal restriction order (intervention order legislation) be made?

The order can be made where a person has frequently made vexatious applications seeking leave to proceed. The relevant court must also be satisfied that it is in the interests of justice to make the order.⁸⁶

The Magistrates' Court or the Children's Court must not make an appeal restriction order that relates to intervention order legislation without hearing the person who will be subject to the order and the person who will be protected by the order, or giving those persons an opportunity to be heard.⁸⁷ The court may order that submissions be made in writing or given at an oral hearing.⁸⁸

7.2.3 Finding out about the making of an appeal restriction order (intervention order legislation)

Where the Magistrates' Court or Children's Court has made an appeal restriction order that relates to intervention order legislation, that court must give a copy of the order to:

- 1) the person subject to the order
- 2) the person protected by the order
- 3) if the applicant is not the person protected by the order, the applicant.⁸⁹

⁸⁶ Section 39(1).

⁸⁷ Section 45(2).

⁸⁸ Section 45(3).

⁸⁹ Section 49.

8 ORDER GRANTING LEAVE TO PROCEED

A person subject to an LRO must apply for leave to proceed in order to make or continue an interlocutory application that is prohibited by the LRO or to continue or commence a proceeding that is prohibited by the LRO. Part 8 of the VP Act provides for the making of orders granting such leave.

Appendix 1 contains flowcharts that set out the procedure for applying for leave to proceed.

8.1 Procedural matters

8.1.1 In which forum should the application for leave be filed?

The leave application must generally be made to the court or VCAT that made the order.⁹⁰ However, in the case of an ELRO or GLRO made by the Supreme Court, the leave application must be made to the court or tribunal in which the proposed proceeding would be heard, unless the order otherwise requires the Supreme Court to hear and determine the leave application.⁹¹ It will be up to the Supreme Court, when making the relevant order, to specify which court or tribunal is to hear the leave application.

8.1.2 What is a person required to disclose in his or her application?

An application for leave to proceed must disclose the following:

- 1) all previous leave applications made by the person
- 2) details of previous vexatious applications, vexatious proceedings and applications or proceedings which have been stayed or dismissed on the basis of being made, commenced or conducted without merit
- 3) an explanation as to how the leave application is materially different to previous applications
- 4) all material facts known to the applicant, whether adverse to or supportive of the application.⁹²

8.1.3 Can the registry refuse to accept the application?

The principal registrar (or equivalent) of the relevant court or tribunal can refuse to accept a leave application for filing, without the direction of the court or tribunal, if he or she is not satisfied that the application is materially different to a previous unsuccessful application.⁹³

8.1.4 Is the proposed respondent notified about the leave application?

The proposed respondent is only notified about the leave application if the court or tribunal considers that the application should proceed. The applicant for leave is prevented from notifying relevant persons about the leave application unless and until the court or tribunal directs him or her to notify those persons or otherwise makes an order in relation to notification.⁹⁴

If the proposed respondent is notified, he or she will be given an opportunity to be heard in relation to the leave application.⁹⁵ The court or VCAT may order either written submissions or oral submissions at its discretion.⁹⁶ Other relevant persons are also notified and given an opportunity to be heard, including the Attorney-General and the person who applied for the LRO to which the application for leave relates.⁹⁷

This approach ensures that those named in a proposed application or proceeding are not put to the time and expense of contesting a leave application that the court or tribunal considers, on the basis of the leave application and the material disclosed, should not proceed.⁹⁸

8.1.5 Does the leave application need to be heard orally?

There is a presumption in the VP Act that leave applications will be determined on the papers. However, the court or tribunal may conduct an oral hearing if there are exceptional circumstances and it is appropriate to do so in the interests of justice.⁹⁹

⁹⁰ Sections 50(1), 52(3).

⁹¹ Sections 52(4), 54(2).

⁹² Section 56.

⁹³ Section 57.

⁹⁴ Sections 59, 60(1), 61(1).

⁹⁵ Section 62(1).

⁹⁶ Section 62(2).

⁹⁷ Sections 60(2), 61(2).

⁹⁸ Minister's second reading speech, Legislative Assembly, 19 February 2014.

⁹⁹ Section 63.

8.2 Substantive matters

8.2.1 What is the threshold for granting leave?

Under the former section 21 of the *Supreme Court Act 1986*, leave could only be granted if the proposed proceeding were not an abuse of process. This was a relatively low threshold and was readily satisfied.¹⁰⁰

By contrast, the VP Act requires an applicant for leave to establish that the proposed proceeding will not be vexatious and that there are reasonable grounds for bringing the proceeding.¹⁰¹ This will require the applicant to establish that the proposed proceeding has a proper basis, for example with evidence as to the factual foundations of the proceeding. If these matters are not established, the leave application will be dismissed.

The court or tribunal may also impose conditions on the grant of leave, for example by requiring that the applicant give security for costs.

8.2.2 What powers do the courts and tribunals have to dismiss leave applications?

In addition to dismissing an application for leave if not satisfied that the proposed proceeding will not be vexatious and that there are reasonable grounds for the proceeding, the relevant court or tribunal may dismiss the leave application if not satisfied that the application is materially different to a previous unsuccessful leave application made by the person.¹⁰²

¹⁰⁰ Minister's second reading speech, Legislative Assembly, 19 February 2014.

¹⁰¹ Sections 51, 53, 55.

¹⁰² Section 58.

9 VARIATION AND REVOCATION ORDERS

Part 9 of the VP Act provides for the making of variation and revocation orders.

Appendix 1 contains a flowchart that sets out the procedure for applying for variation or revocation of an LRO.

9.1 When can a litigation restraint order be varied or revoked?

The court or VCAT that made an LRO may vary that order in any manner considered appropriate, or may revoke the order, if it considers it is in the interests of justice to do so.¹⁰³ The person subject to the LRO can apply for the variation or revocation of the order, but only with leave of the relevant court or VCAT.¹⁰⁴ The court or VCAT may also vary or revoke the order on its own motion.¹⁰⁵

9.2 Is the person who applied for the LRO notified about the application?

The person who applied for the LRO is notified only if the court or tribunal considers that the application for variation or revocation should proceed. As with the process for applications for leave to proceed, the applicant is prevented from notifying relevant persons about the application unless and until the court or tribunal directs them to notify those persons or otherwise makes an order in relation to notification.¹⁰⁶

Where a person has been given notice that the court or VCAT proposes to determine the application of another person (who is the subject of an LRO) for revocation or variation of an LRO, the court or VCAT may receive written or oral submissions from the first person in relation to that application.¹⁰⁷

9.3 Does there need to be an oral hearing for the application?

As with applications for leave to proceed, there is a presumption that applications for variation or revocation will be determined on the papers. However, the court or VCAT may conduct an oral hearing if there are exceptional circumstances and it is appropriate to do so in the interests of justice.¹⁰⁸

9.4 What does a variation or revocation application prevention order do and when can it be made?

A variation or revocation application prevention order may prevent a person from continuing an application for leave to vary or revoke an LRO or from making further applications for leave to vary or revoke an LRO.¹⁰⁹

The order may be made if the person has frequently made vexatious applications for leave to vary or revoke an LRO.¹¹⁰

The order lasts for the period of time specified in the order, which may be indefinitely. The duration may also be extended.¹¹¹

¹⁰³ Section 69(1).

¹⁰⁴ Sections 65, 69(2)(b).

¹⁰⁵ Section 69(2)(a).

¹⁰⁶ Sections 66, 67.

¹⁰⁷ Section 70(1) and (2).

¹⁰⁸ Section 71.

¹⁰⁹ Section 74(4). See, generally, Part 9, Div 2.

¹¹⁰ Section 74(1), (2).

¹¹¹ Section 77.

10 APPEALS

Part 10 of the VP Act provides for appeals, which can only be commenced once the Supreme Court has granted leave to appeal.

Appendix 1 contains a flowchart that sets out the procedure for appeals.

10.1 Which decisions can be appealed under the VP Act?

A person may apply to the Supreme Court for leave to appeal the following decisions:

- 1) a decision to refuse leave to apply for an LRO
- 2) a decision to make, or refuse to make, an LRO or an acting in concert order
- 3) a decision to vary or revoke, or refuse to vary or revoke, an LRO
- 4) a decision to refuse an application for leave to proceed (unless an appeal restriction order is in place, in which case an appeal is not available from such decisions).

An appeal is only available on a question of law.¹¹²

10.2 Is the proposed respondent notified about the leave application?

The proposed respondent is notified only if the Supreme Court considers that the application for leave to appeal should proceed. As with applications for leave to proceed and applications to vary or revoke an LRO, the applicant is prevented from notifying relevant persons about the leave application unless and until the court or tribunal directs him or her to notify those persons or otherwise makes an order in relation to notification.¹¹³

Where a person has been given notice that the Supreme Court proposes to determine the application of another person (who is the subject of an LRO) for leave to appeal, the Court may consider written or oral submissions from the first person in relation to that application.¹¹⁴

10.3 Does there need to be an oral hearing for the leave application?

As with applications for leave to proceed and applications to vary or revoke a litigation restraint order, there is a presumption that applications for leave to appeal will be determined on the papers.¹¹⁵

¹¹² Section 79.

¹¹³ Sections 80, 81, 82.

¹¹⁴ Section 83(1), (2).

¹¹⁵ Section 84.

11 OTHER MATTERS

11.1 Publication of orders

The courts and VCAT are required to notify the Attorney-General about certain orders made under the VP Act¹¹⁶, and the Attorney-General is required to publish a copy of those orders in the Government Gazette.¹¹⁷ The Attorney-General may also choose to publish details of the orders made in another way.¹¹⁸

A copy of an order that relates to intervention order legislation must have removed from it the name of any person protected by the order, including a child of that person, unless the court when making the order otherwise directs.¹¹⁹

11.2 Effect on litigants previously declared vexatious

11.2.1 Supreme Court Act 1986

The VP Act deems declared vexatious litigants to be subject to a GLRO on the same terms as the terms of the order under section 21 of the Supreme Court Act. The provisions of the VP Act apply to the person, including the additional requirements when making applications for leave to bring further proceedings.¹²⁰ For example, if a declared vexatious litigant wants to bring new proceedings, he or she will be required to disclose various matters and establish that the proposed proceeding is not vexatious and that there are reasonable grounds for the proceeding.

11.2.2 Intervention order legislation

Similarly, the VP Act provides that historical orders declaring a person to be vexatious under section 193 of the *Family Violence Protection Act 2008* or section 165 of the *Personal Safety Intervention Orders Act 2010* are taken to be:

- 1) in the case of orders made by the Magistrates' Court, ELROs that relate to intervention order legislation made by the Magistrates' Court under section 19 of the VP Act, or
- 2) in the case of an orders made by the Children's Court, ERLOs that relate to intervention order legislation made by the Children's Court under section 19 of the VP Act.¹²¹

The terms of such ELROs are the same as the terms of the orders made under the intervention order legislation unless those terms are otherwise varied or revoked under the VP Act.¹²²

¹¹⁶ Sections 47(1) and 72(1).

¹¹⁷ Section 85(1).

¹¹⁸ Section 85(2).

¹¹⁹ Sections 85(4) and 86.

¹²⁰ Section 91.

¹²¹ Sections 94(1), 97(1).

¹²² Sections 94(2), 97(2).

Appendix 1 Flowcharts for *Vexatious Proceedings Act 2014*

FIGURE 1 – LIMITED LITIGATION RESTRAINT ORDERS (LLRO): MAKING AN ORDER

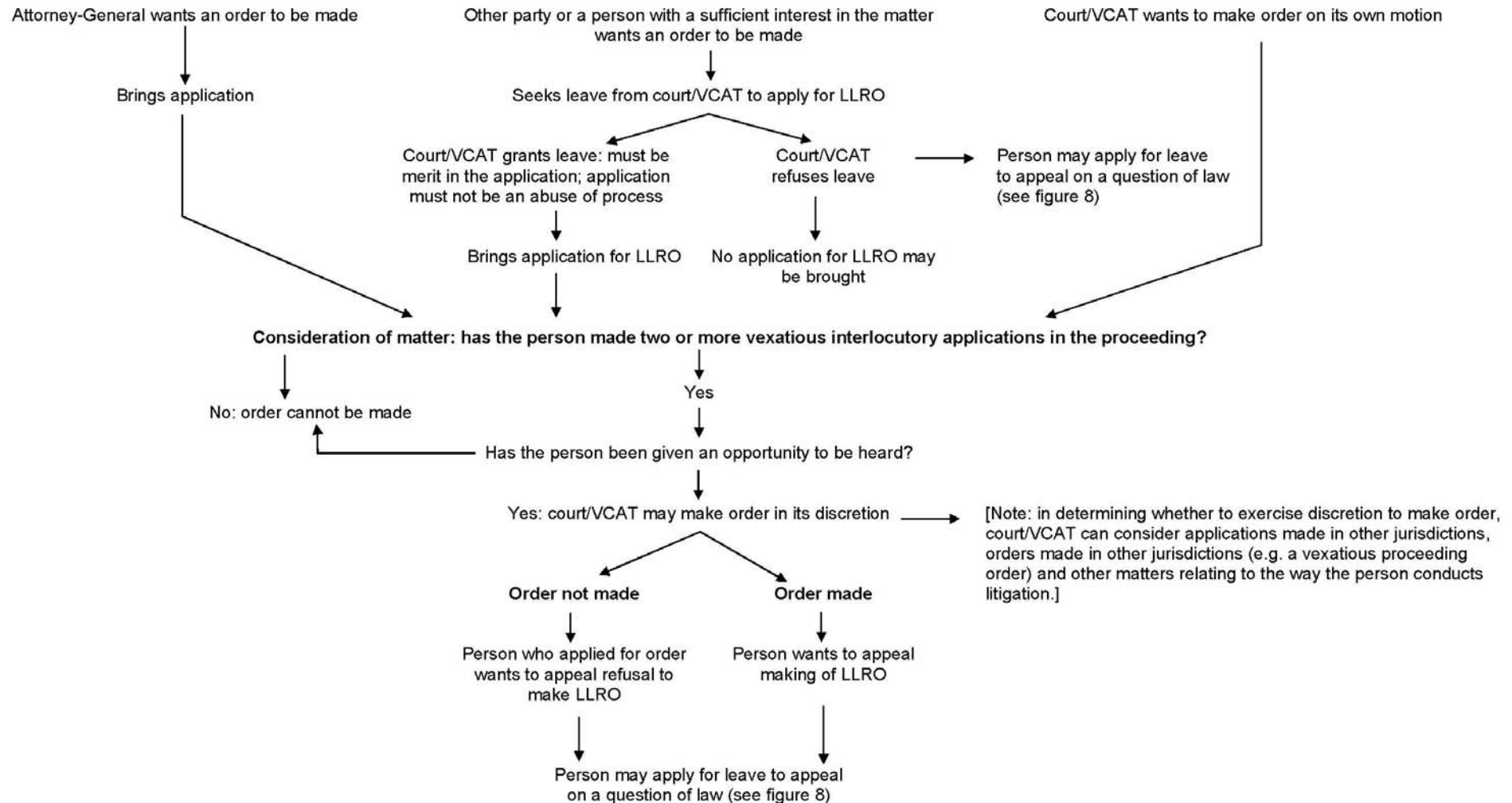


FIGURE 2 – LIMITED LITIGATION RESTRAINT ORDERS: AFTER AN ORDER IS MADE

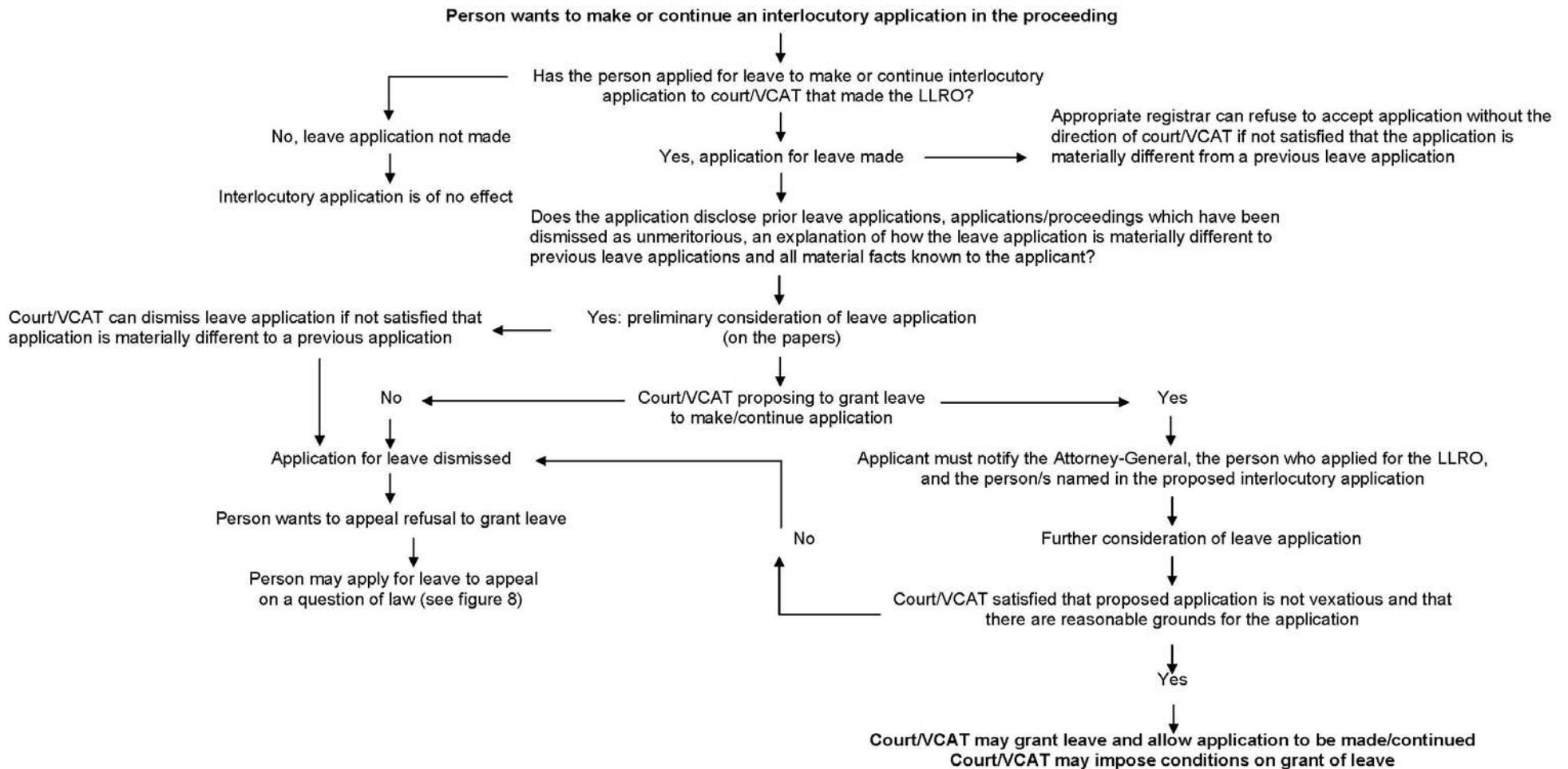


FIGURE 3 – EXTENDED LITIGATION RESTRAINT ORDERS (ELRO): MAKING AN ORDER

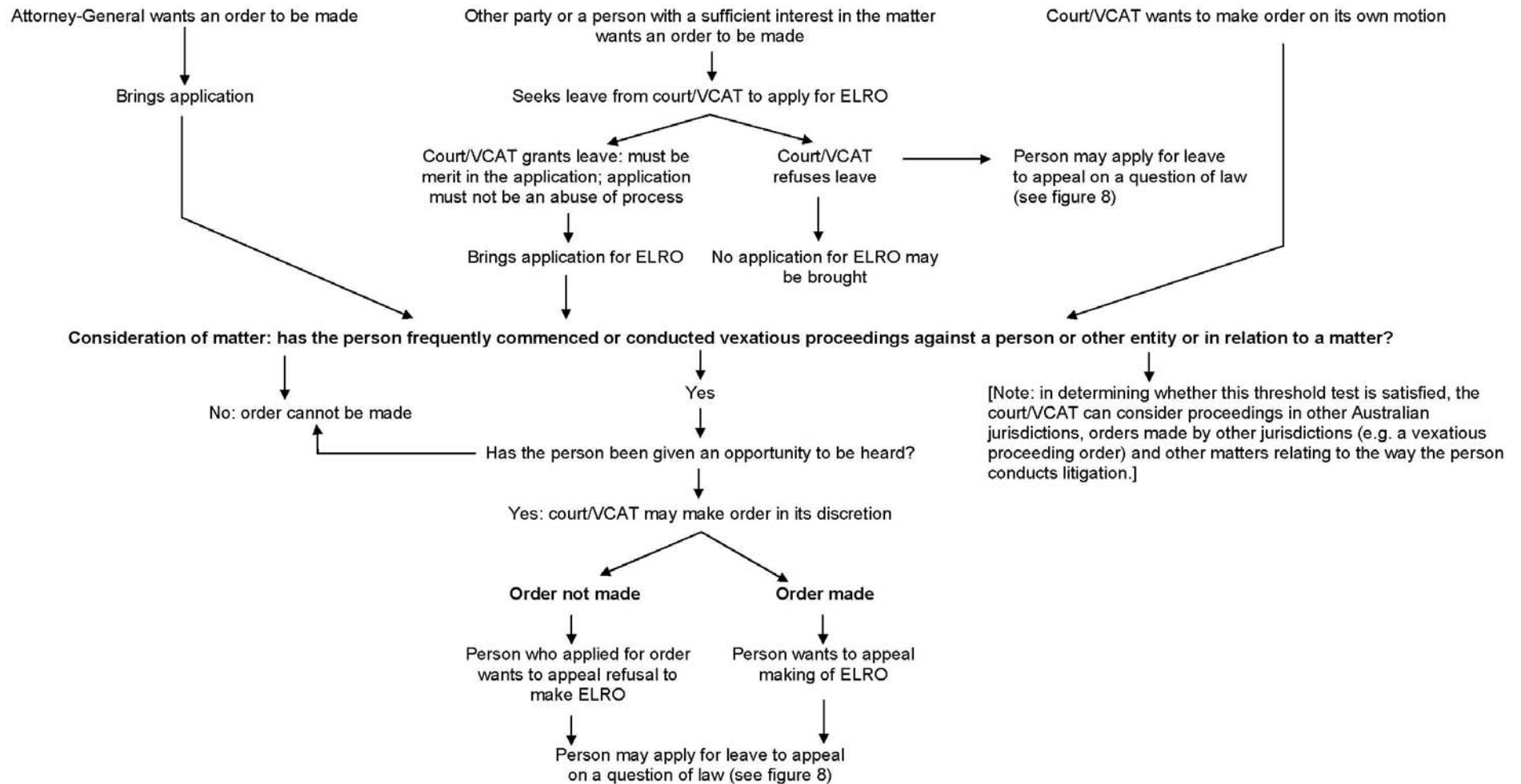


FIGURE 4 – EXTENDED LITIGATION RESTRAINT ORDERS: AFTER AN ORDER IS MADE

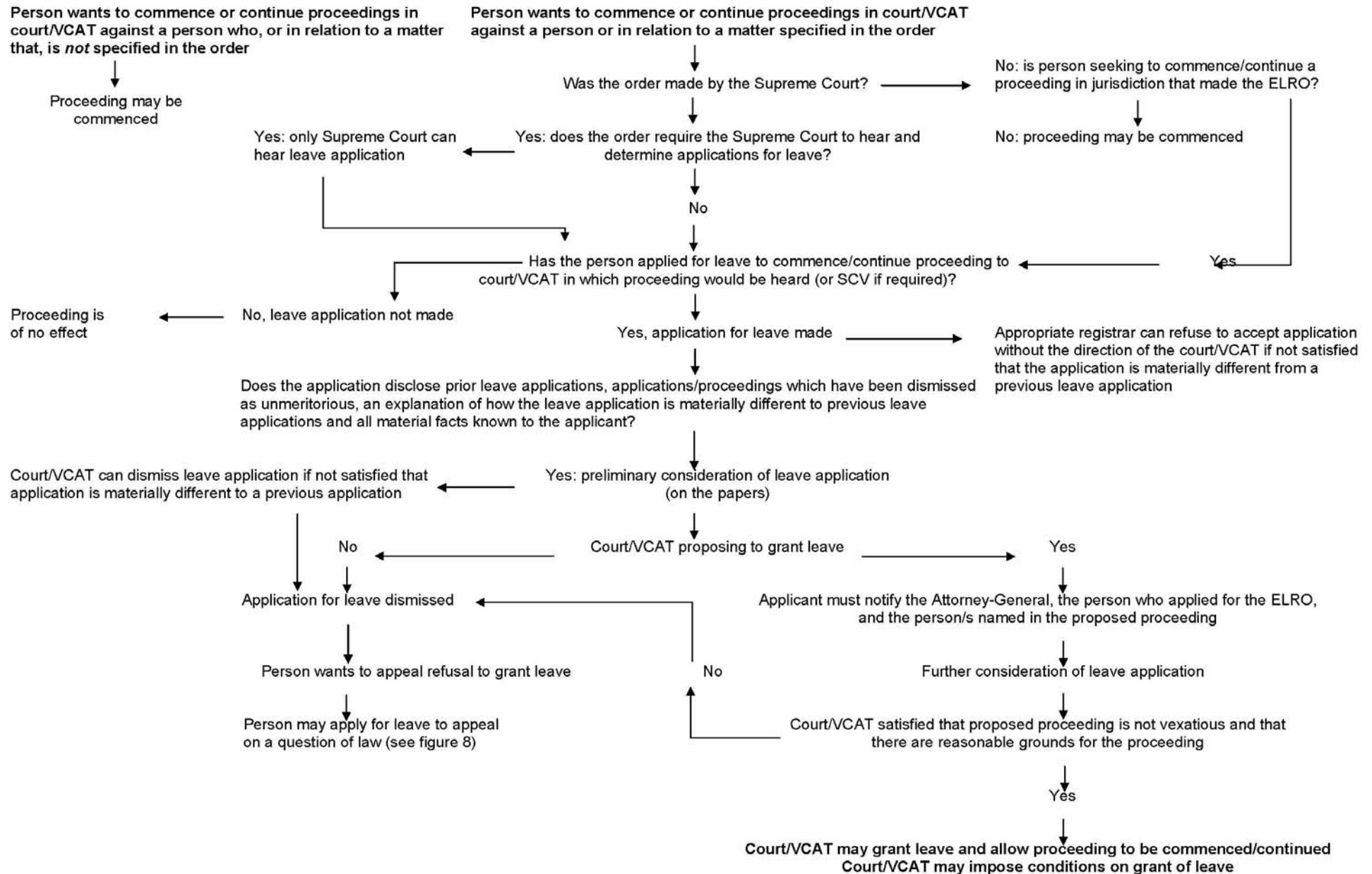


FIGURE 5 – GENERAL LITIGATION RESTRAINT ORDERS (GLRO): MAKING AN ORDER

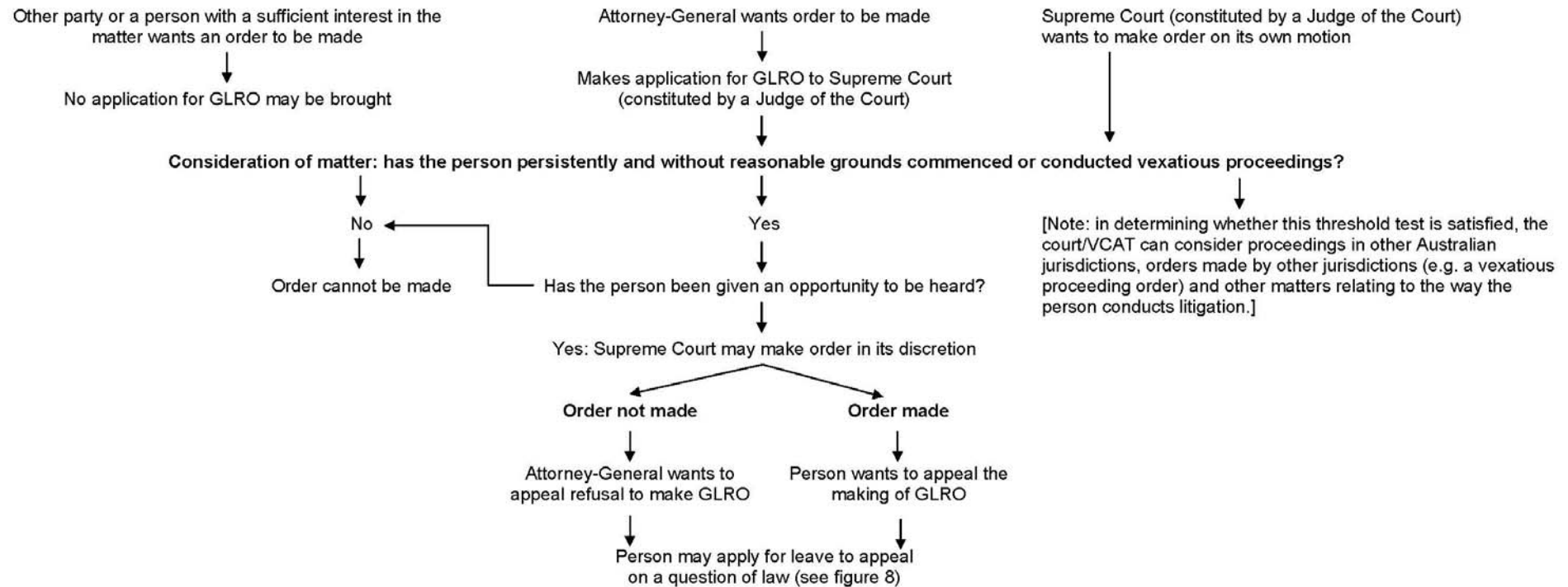


FIGURE 6 – GENERAL LITIGATION RESTRAINT ORDERS: AFTER AN ORDER IS MADE (BY THE SUPREME COURT)

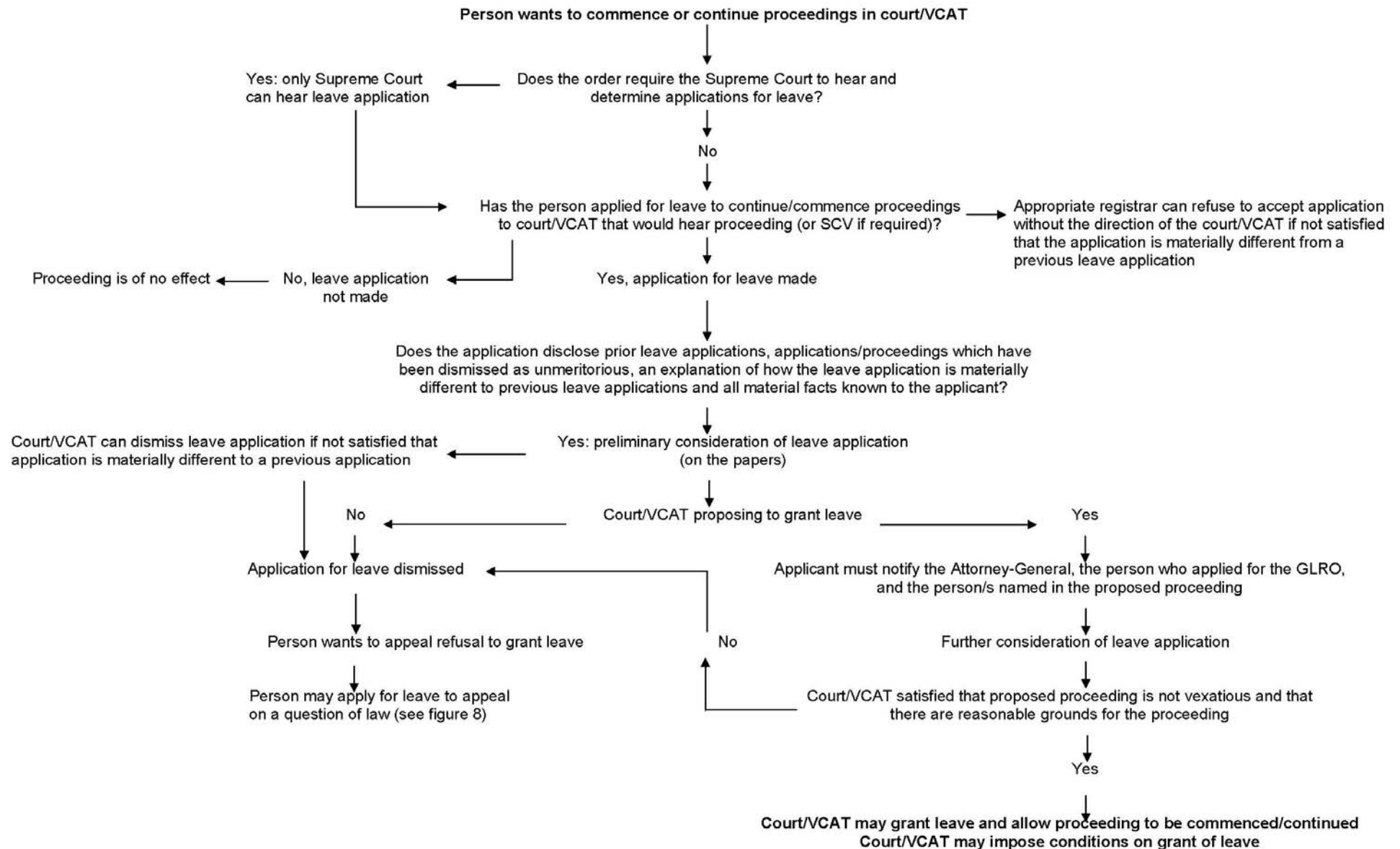


FIGURE 7 – ALL LITIGATION RESTRAINT ORDERS: VARIATION AND REVOCATION

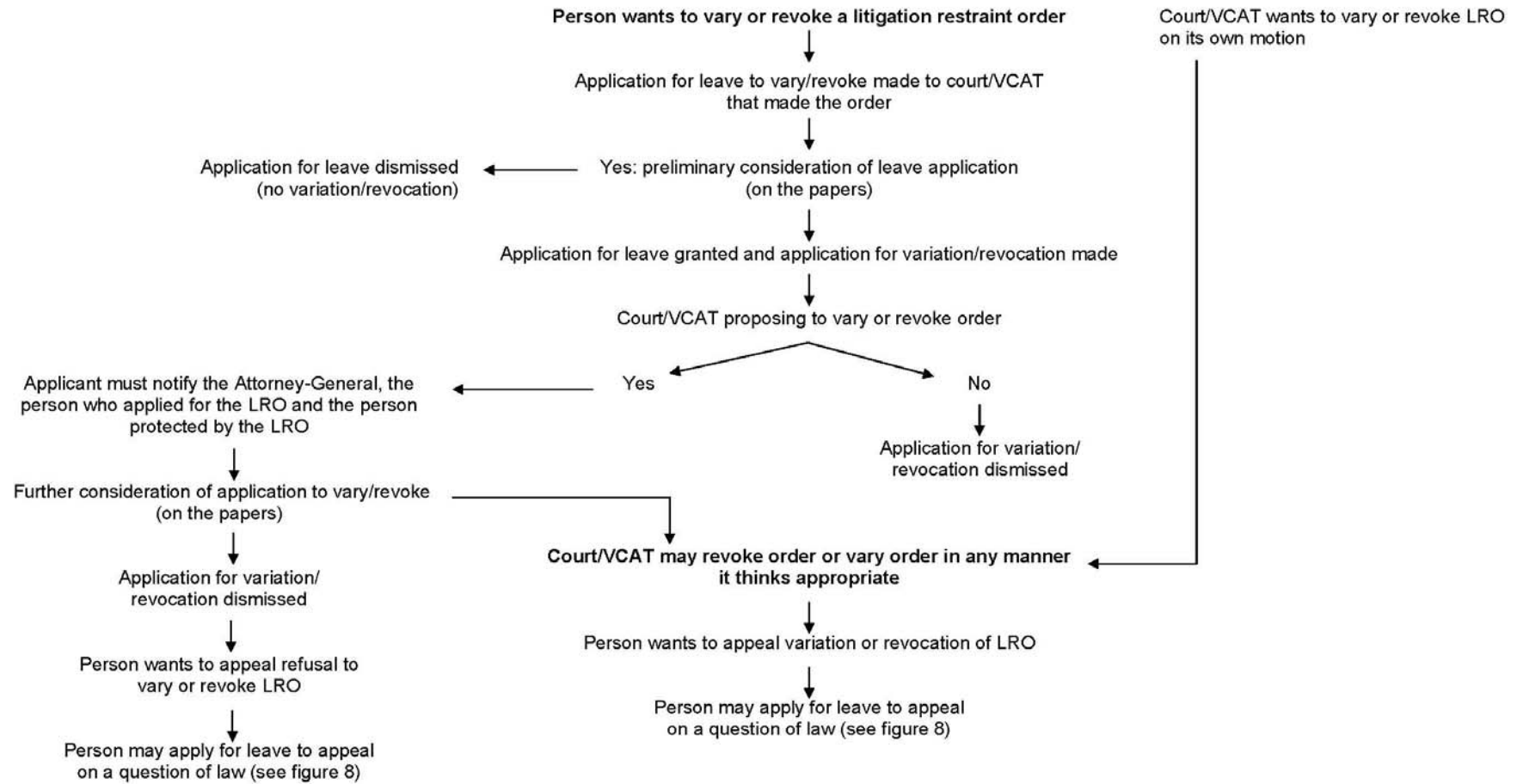
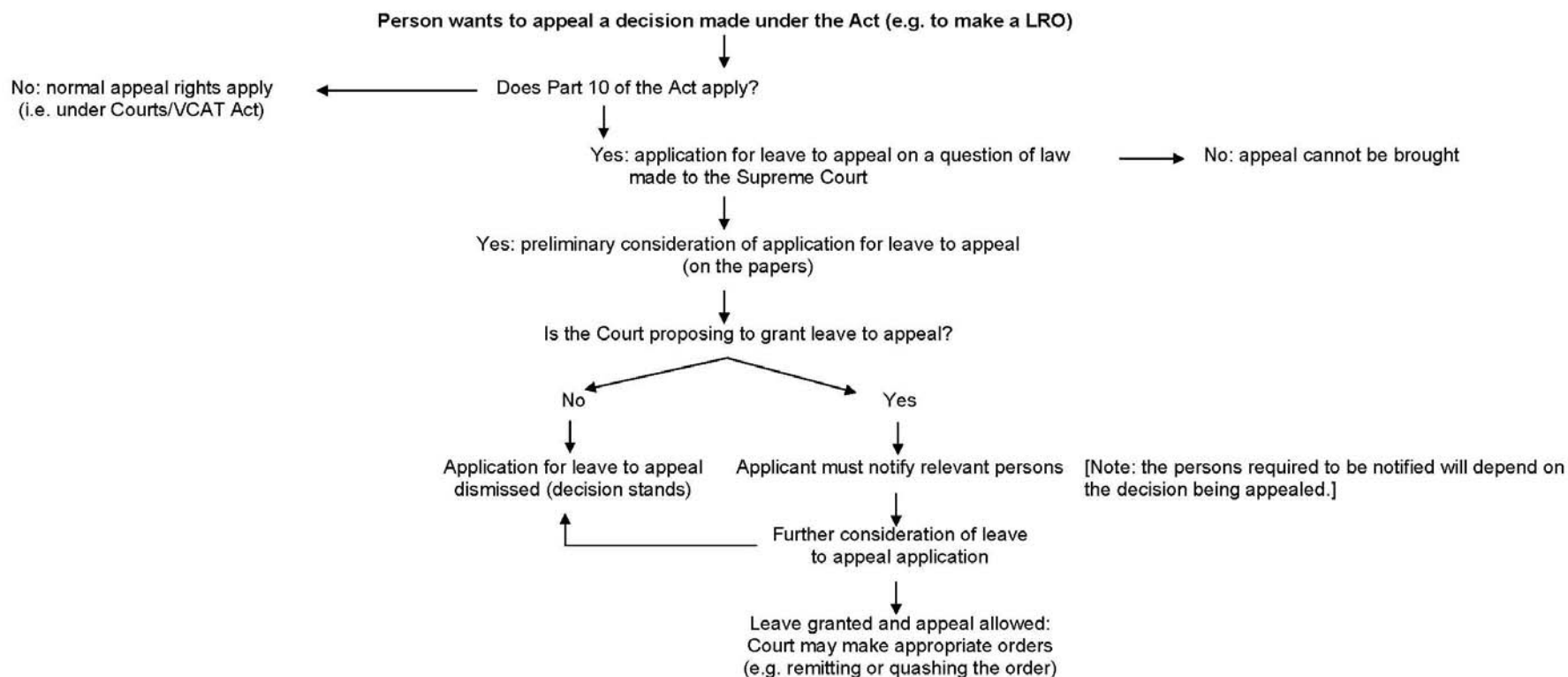


FIGURE 8 – APPEALS FROM DECISIONS



Appendix 2 Orders that can be made by court / tribunal

Supreme Court of Victoria

The Supreme Court can make the following orders under the VP Act:

- 1) Leave be granted to apply for an LLRO¹²³
- 2) LLRO¹²⁴
- 3) Leave be granted to apply for an ELRO (general)¹²⁵
- 4) ELRO (general)¹²⁶
- 5) GLRO¹²⁷
- 6) Acting in concert order (general)¹²⁸
- 7) Appeal restriction order (general)¹²⁹
- 8) Leave be granted to make or continue an interlocutory application in a proceeding to which an LLRO relates¹³⁰
- 9) Leave be granted to commence or continue a proceeding against a person or other entity protected by an ELRO, a child of a person protected by the ELRO, or in respect of a matter described in the ELRO¹³¹
- 10) Leave be granted to a person subject to a GLRO to commence or continue a proceeding¹³²
- 11) Application for leave to proceed brought by a person subject to an LRO be dismissed¹³³
- 12) An LRO be varied¹³⁴
- 13) An LRO be revoked¹³⁵
- 14) A variation or revocation application prevention order in respect of a person who is subject to an LRO¹³⁶
- 15) Leave be granted to a person to appeal on a question of law arising in the following decision of a Victorian court or tribunal:
 - a. a decision to refuse leave to apply for an LRO¹³⁷
 - b. a decision to make an LRO or an acting in concert order¹³⁸
 - c. a decision to refuse to make an LRO or an acting in concert order¹³⁹
 - d. a decision to vary or revoke an LRO¹⁴⁰
 - e. a decision to refuse to vary or revoke an LRO¹⁴¹
 - f. subject to any appeal restriction order, a decision to refuse an application for leave to proceed.¹⁴²

County Court of Victoria

The County Court can make the following orders under the VP Act:

- 1) Leave be granted to apply for an LLRO¹⁴³
- 2) LLRO¹⁴⁴

¹²³ Section 10(3).

¹²⁴ Section 11.

¹²⁵ Section 16(3).

¹²⁶ Section 17. See also section 31.

¹²⁷ Section 29.

¹²⁸ Section 35.

¹²⁹ Section 37.

¹³⁰ Section 51.

¹³¹ Section 53.

¹³² Section 55.

¹³³ Section 58.

¹³⁴ Section 69(1)(a).

¹³⁵ Section 69(1)(b).

¹³⁶ Section 74(1).

¹³⁷ Section 79(a).

¹³⁸ Section 79(b).

¹³⁹ Section 79(c).

¹⁴⁰ Section 79(d).

¹⁴¹ Section 79(e).

¹⁴² Section 79(f).

¹⁴³ Section 10(3).

¹⁴⁴ Section 11.

- 3) Leave be granted to apply for an ELRO (general)¹⁴⁵
- 4) ELRO (general)¹⁴⁶
- 5) Acting in concert order (general)¹⁴⁷
- 6) Appeal restriction order (general)¹⁴⁸
- 7) Leave be granted to make or continue an interlocutory application in a proceeding to which an LLRO relates¹⁴⁹
- 8) Leave be granted to commence or continue a proceeding against a person or other entity protected by an ELRO, a child of a person protected by the ELRO, or in respect of a matter described in the ELRO¹⁵⁰
- 9) Leave be granted to a person subject to a GLRO to commence or continue a proceeding¹⁵¹
- 10) Application for leave to proceed brought by a person subject to an LRO be dismissed¹⁵²
- 11) An LRO be varied¹⁵³
- 12) An LRO be revoked¹⁵⁴
- 13) A variation or revocation application prevention order in respect of a person who is subject to an LRO.¹⁵⁵

Magistrates' Court of Victoria

The Magistrates' Court can make the following orders under the VP Act:

- 1) Leave be granted to apply for an LLRO¹⁵⁶
- 2) LLRO¹⁵⁷
- 3) Leave be granted to apply for an ELRO (general)¹⁵⁸
- 4) ELRO (general)¹⁵⁹
- 5) Leave be granted to apply for an ELRO (intervention order legislation)¹⁶⁰
- 6) ELRO (intervention order legislation)¹⁶¹
- 7) Acting in concert order (general)¹⁶²
- 8) Acting in concert order (intervention order legislation)¹⁶³
- 9) Appeal restriction order (general)¹⁶⁴
- 10) Appeal restriction order (intervention order legislation)¹⁶⁵
- 11) Leave be granted to make or continue an interlocutory application in a proceeding to which an LLRO relates¹⁶⁶
- 12) Leave be granted to commence or continue a proceeding against a person or other entity protected by an ELRO, a child of a person protected by the ELRO, or in respect of a matter described in the ELRO¹⁶⁷
- 13) Leave be granted to a person subject to a GLRO to commence or continue a proceeding¹⁶⁸
- 14) Application for leave to proceed brought by a person subject to an LRO be dismissed¹⁶⁹

¹⁴⁵ Section 16(3).

¹⁴⁶ Section 17.

¹⁴⁷ Section 35.

¹⁴⁸ Section 38.

¹⁴⁹ Section 51.

¹⁵⁰ Section 53.

¹⁵¹ Section 55.

¹⁵² Section 58.

¹⁵³ Section 69(1)(a).

¹⁵⁴ Section 69(1)(b).

¹⁵⁵ Section 74(1).

¹⁵⁶ Section 10(3).

¹⁵⁷ Section 11.

¹⁵⁸ Section 16(3).

¹⁵⁹ Section 17.

¹⁶⁰ Section 16(3).

¹⁶¹ Section 19.

¹⁶² Section 35.

¹⁶³ Section 36.

¹⁶⁴ Section 38.

¹⁶⁵ Section 39.

¹⁶⁶ Section 51.

¹⁶⁷ Section 53.

¹⁶⁸ Section 55.

¹⁶⁹ Section 58.

- 15) An LRO including an ELRO (intervention order legislation) be varied¹⁷⁰
- 16) An LRO including an ELRO (intervention order legislation) be revoked¹⁷¹
- 17) A variation or revocation application prevention order in respect of a person who is subject to an LRO (including an ELRO that relates to intervention order legislation).¹⁷²

Children's Court of Victoria

The Children's Court can make the following orders under the VP Act:

- 1) Leave be granted to apply for an ELRO (intervention order legislation)¹⁷³
- 2) ELRO (intervention order legislation)¹⁷⁴
- 3) Acting in concert order (intervention order legislation)¹⁷⁵
- 4) Appeal restriction order (intervention order legislation)¹⁷⁶
- 5) Leave be granted to commence or continue a proceeding against a person or other entity protected by an ELRO, a child of a person protected by the ELRO, or in respect of a matter described in the ELRO¹⁷⁷
- 6) Leave be granted to a person subject to a GLRO to commence or continue a proceeding¹⁷⁸
- 7) Application for leave to proceed brought by a person subject to an LRO be dismissed¹⁷⁹
- 8) An ELRO (intervention order legislation) be varied¹⁸⁰
- 9) An ELRO (intervention order legislation) be revoked¹⁸¹
- 10) A variation or revocation application prevention order in respect of a person who is subject to an ELRO that relates to intervention order legislation.¹⁸²

VCAT

VCAT can make the following orders under the VP Act:

- 1) Leave be granted to apply for an LLRO¹⁸³
- 2) LLRO¹⁸⁴
- 3) Leave be granted to apply for an ELRO (general)¹⁸⁵
- 4) ELRO (general)¹⁸⁶
- 5) Acting in concert order (general)¹⁸⁷
- 6) Appeal restriction order (general)¹⁸⁸
- 7) Leave be granted to make or continue an interlocutory application in a proceeding to which an LLRO relates¹⁸⁹
- 8) Leave be granted to commence or continue a proceeding against a person or other entity protected by an ELRO, a child of a person protected by the ELRO, or in respect of a matter described in the ELRO¹⁹⁰
- 9) Leave be granted to a person subject to a GLRO to commence or continue a proceeding¹⁹¹
- 10) Application for leave to proceed brought by a person subject to an LRO be dismissed¹⁹²

¹⁷⁰ Section 69(1)(a).

¹⁷¹ Section 69(1)(b).

¹⁷² Section 74(1) and (2).

¹⁷³ Section 16(3).

¹⁷⁴ Section 19.

¹⁷⁵ Section 36.

¹⁷⁶ Section 39.

¹⁷⁷ Section 53.

¹⁷⁸ Section 55.

¹⁷⁹ Section 58.

¹⁸⁰ Section 69(1)(a).

¹⁸¹ Section 69(1)(b).

¹⁸² Section 74(2).

¹⁸³ Section 10(3).

¹⁸⁴ Section 11.

¹⁸⁵ Section 16(3).

¹⁸⁶ Section 17.

¹⁸⁷ Section 35.

¹⁸⁸ Section 38.

¹⁸⁹ Section 51.

¹⁹⁰ Section 53.

¹⁹¹ Section 55.

¹⁹² Section 58.

- 11) An LRO be varied¹⁹³
- 12) An LRO be revoked¹⁹⁴
- 13) A variation or revocation application prevention order in respect of a person who is subject to an LRO.¹⁹⁵

VOCAT

The Victims of Crime Assistance Tribunal can make the following orders under the VP Act:

- 1) Leave be granted to commence or continue a proceeding against a person or other entity protected by an ELRO, a child of a person protected by the ELRO, or in respect of a matter described in the ELRO¹⁹⁶
- 2) Leave be granted to a person subject to a GLRO to commence or continue a proceeding¹⁹⁷
- 3) Application for leave to proceed brought by a person subject to an LRO be dismissed.¹⁹⁸

¹⁹³ Section 69(1)(a).

¹⁹⁴ Section 69(1)(b).

¹⁹⁵ Section 74(1).

¹⁹⁶ Section 53.

¹⁹⁷ Section 55.

¹⁹⁸ Section 58.

Appendix 3 Notification requirements for courts and tribunals

Supreme Court of Victoria

- 1) Upon the making of an LRO:
 - a. the Supreme Court must give a copy of that order to the Attorney-General¹⁹⁹
 - b. the Prothonotary must cause a copy of the order to be given:
 - i. in the case of a GLRO or an ELRO, to each Victorian court or tribunal (meaning the County Court, the Magistrates' Court, the Children's Court, VCAT and VOCAT)²⁰⁰
 - ii. in the case of an LLRO, to the County Court, the Magistrates' Court and to VCAT.²⁰¹
- 2) Upon the making of an acting in concert order:
 - a. the Supreme Court must give a copy of that order to the Attorney-General²⁰²
 - b. the Prothonotary must cause a copy of the order to be given to the County Court, the Magistrates' Court and to VCAT.²⁰³
- 3) Upon the making of an appeal restriction order:
 - a. the Supreme Court must give a copy of that order to the Attorney-General²⁰⁴
 - b. the Prothonotary must cause a copy of the order to be given to the County Court, the Magistrates' Court and to VCAT.²⁰⁵
- 4) If the Supreme Court considers that an application for leave to proceed, other than an application for leave to proceed under an ELRO (intervention order legislation), should proceed, the Court must direct the applicant for leave to proceed to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO 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.²⁰⁶
- 5) If the Supreme Court considers that an application to vary or revoke an LRO, other than an application to vary or revoke an ELRO (intervention order legislation), should proceed, the Court must direct the applicant for variation or revocation to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO
 - c. the person (if any) who is protected by the LRO.²⁰⁷
- 6) Upon the making of an order varying or revoking an LRO:
 - a. the Supreme Court must ensure a copy of the order is given to the Attorney-General²⁰⁸
 - b. the Prothonotary must cause a copy of the order to be given:
 - i. in the case of the variation or revocation of a GLRO or an ELRO, to each Victorian court or tribunal (meaning the County Court, the Magistrates' Court, the Children's Court, VCAT and VOCAT)²⁰⁹
 - ii. in the case of the variation or revocation of an LLRO, to the County Court, the Magistrates' Court and to VCAT.²¹⁰

County Court of Victoria

- 1) Upon the making of an LRO:
 - a. the County Court must give a copy of that order to the Attorney-General,²¹¹ and

¹⁹⁹ Section 47.

²⁰⁰ Section 48(1)(a).

²⁰¹ Section 48(1)(b).

²⁰² Section 47.

²⁰³ Section 48(1)(b).

²⁰⁴ Section 47.

²⁰⁵ Section 48(1)(b).

²⁰⁶ Section 60(1), (2).

²⁰⁷ Section 67(1), (2).

²⁰⁸ Section 72(1).

²⁰⁹ Section 73(1)(a).

²¹⁰ Section 73(1)(b).

²¹¹ Section 47.

- b. 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.²¹²
- 2) Upon the making of an acting in concert order:
 - a. the County Court must give a copy of that order to the Attorney-General²¹³
 - b. 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.²¹⁴
- 3) Upon the making of an appeal restriction order:
 - a. the County Court must give a copy of that order to the Attorney-General²¹⁵
 - b. 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.²¹⁶
- 4) If the County Court considers that an application for leave to proceed, other than an application for leave to proceed under an ELRO (intervention order legislation), should proceed, the Court must direct the applicant for leave to proceed to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO 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.²¹⁷
- 5) If the County Court considers that an application to vary or revoke an LRO, other than an application to vary or revoke an ELRO (intervention order legislation), should proceed, the Court must direct the applicant for variation or revocation to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO
 - c. the person (if any) who is protected by the LRO.²¹⁸
- 6) Upon the making of an order varying or revoking an LRO:
 - a. the County Court must ensure a copy of the order is given to the Attorney-General²¹⁹
 - b. 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.²²⁰

Magistrates' Court of Victoria

- 1) The principal registrar must cause a copy of an application under section 18 for an ELRO (intervention order legislation) to be given to the person who it is proposed will be protected by the order and the person who it is proposed will be subject to the order.²²¹
- 2) Upon the making of an LRO that does not relate to intervention order legislation:
 - a. the Magistrates' Court must give a copy of that order to the Attorney-General²²²
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to the Supreme Court, the County Court and VCAT.²²³
- 3) Upon the making of an ELRO (intervention order legislation):
 - a. the Magistrates' Court must give a copy of that order to the Attorney-General²²⁴
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to:
 - i. the Supreme Court, the County Court, the Children's Court and to VCAT²²⁵
 - ii. the person subject to the order²²⁶

²¹² Section 48(2).

²¹³ Section 47.

²¹⁴ Section 48(2).

²¹⁵ Section 47.

²¹⁶ Section 48(2).

²¹⁷ Section 60(1), (2).

²¹⁸ Section 67(1), (2).

²¹⁹ Section 72(1).

²²⁰ Section 73(2).

²²¹ Section 44.

²²² Section 47.

²²³ Section 48(3)(b).

²²⁴ Section 47.

²²⁵ Section 48(3)(a).

²²⁶ Section 49(a).

- iii. the person protected by the order²²⁷
 - iv. if the applicant is not the person protected by the order, the applicant.²²⁸
- 4) Upon the making of an acting in concert order that does not relate to intervention order legislation:
 - a. the Magistrates' Court must give a copy of that order to the Attorney-General²²⁹
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to the Supreme Court, the County Court and VCAT.²³⁰
- 5) Upon the making of an acting in concert order (intervention order legislation):
 - a. the Magistrates' Court must give a copy of that order to the Attorney-General²³¹
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to:
 - i. the Supreme Court, the County Court, the Children's Court and to VCAT²³²
 - ii. the person subject to the order²³³
 - iii. the person protected by the order²³⁴
 - iv. if the applicant is not the person protected by the order, the applicant.²³⁵
- 6) Upon the making of an appeal restriction order that does not relate to intervention order legislation:
 - a. the Magistrates' Court must give a copy of that order to the Attorney-General²³⁶
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to the Supreme Court, the County Court and VCAT.²³⁷
- 7) Upon the making of an appeal restriction order(intervention order legislation):
 - a. the Magistrates' Court must give a copy of that order to the Attorney-General²³⁸
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to:
 - i. the Supreme Court, the County Court, the Children's Court and to VCAT²³⁹
 - ii. the person subject to the order²⁴⁰
 - iii. the person protected by the order²⁴¹
 - iv. if the applicant is not the person protected by the order, the applicant.²⁴²
- 8) If the Magistrates' Court considers that an application for leave to proceed, other than an application for leave to proceed under an ELRO (intervention order legislation), should proceed, the Court must direct the applicant for leave to proceed to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO 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.²⁴³
- 9) If the Magistrates' Court considers that an application for leave to proceed under an ELRO (intervention order legislation) should proceed, the Court must direct the principal registrar of the Court to cause notice of the application to be given to:
 - a. the Attorney-General
 - b. the person (if any who made the application for the ELRO to which the application for leave to proceed relates

²²⁷ Section 49(b).

²²⁸ Section 49(c).

²²⁹ Section 47.

²³⁰ Section 48(3)(b).

²³¹ Section 47.

²³² Section 48(3)(a).

²³³ Section 49(a).

²³⁴ Section 49(b).

²³⁵ Section 49(c).

²³⁶ Section 47.

²³⁷ Section 48(3)(b).

²³⁸ Section 47.

²³⁹ Section 48(3)(a).

²⁴⁰ Section 49(a).

²⁴¹ Section 49(b).

²⁴² Section 49(c).

²⁴³ Section 60(1), (2).

- c. any person named in the proceeding to which the application for leave to proceed relates.²⁴⁴
- 10) If the Magistrates' Court considers that an application to vary or revoke an LRO, other than an application to vary or revoke an ELRO (intervention order legislation), should proceed, the Court must direct the applicant for variation or revocation to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO
 - c. the person (if any) who is protected by the LRO.²⁴⁵
- 11) If the Magistrates' Court considers that an application to vary or revoke an ELRO (intervention order legislation) should proceed, the Court must direct the principal registrar of the Court to cause notice of the application to be given to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the ELRO
 - c. the person protected by the ELRO.²⁴⁶
- 12) Upon the making of an order varying or revoking an LRO that does not relate to intervention order legislation:
 - a. the Magistrates' Court must ensure a copy of the order is given to the Attorney-General²⁴⁷
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to the Supreme Court, the County Court and to VCAT.²⁴⁸
- 13) Upon the making of an order varying or revoking an ELRO (intervention order legislation):
 - a. the Magistrates' Court must ensure a copy of the order is given to the Attorney-General²⁴⁹
 - b. the principal registrar of the Magistrates' Court must cause a copy of the order to be given to the Supreme Court, the County Court, the Children's Court and to VCAT.²⁵⁰

Children's Court of Victoria

- 1) The principal registrar must cause a copy of an application under section 18 for an ELRO (intervention order legislation) to be given to the person who it is proposed will be protected by the order and the person who it is proposed will be subject to the order.²⁵¹
- 2) Upon the making of an ELRO (intervention order legislation):
 - a. the Children's Court must give a copy of that order to the Attorney-General²⁵²
 - b. the principal registrar of the Children's Court must cause a copy of the order to be given to:
 - i. the Supreme Court, the County Court, the Magistrates' Court and the VCAT²⁵³
 - ii. the person subject to the order²⁵⁴
 - iii. the person protected by the order²⁵⁵
 - iv. if the applicant is not the person protected by the order, the applicant.²⁵⁶
- 3) Upon the making of an acting in concert order (intervention order legislation):
 - a. the Children's Court must give a copy of that order to the Attorney-General²⁵⁷
 - b. the principal registrar of the Children's Court must cause a copy of the order to be given to:
 - i. the Supreme Court, the County Court, the Magistrates' Court and the VCAT²⁵⁸
 - ii. the person subject to the order²⁵⁹
 - iii. the person protected by the order²⁶⁰

²⁴⁴ Section 61(1), (2).

²⁴⁵ Section 67(1), (2).

²⁴⁶ Section 68(1), (2).

²⁴⁷ Section 72(1).

²⁴⁸ Section 73(3)(b).

²⁴⁹ Section 72(1).

²⁵⁰ Section 73(3)(a).

²⁵¹ Section 44.

²⁵² Section 47.

²⁵³ Section 48(4).

²⁵⁴ Section 49(a).

²⁵⁵ Section 49(b).

²⁵⁶ Section 49(c).

²⁵⁷ Section 47.

²⁵⁸ Section 48(4).

²⁵⁹ Section 49(a).

²⁶⁰ Section 49(b).

- iv. if the applicant is not the person protected by the order, the applicant.²⁶¹
- 4) Upon the making of an appeal restriction order (intervention order legislation):
 - a. the Children’s Court must give a copy of that order to the Attorney-General²⁶²
 - b. the principal registrar of the Children’s Court must cause a copy of the order to be given to:
 - i. the Supreme Court, the County Court, the Magistrates’ Court and the VCAT²⁶³
 - ii. the person subject to the order²⁶⁴
 - iii. the person protected by the order²⁶⁵
 - iv. if the applicant is not the person protected by the order, the applicant.²⁶⁶
- 5) If the Children’s Court considers that an application for leave to proceed under an ELRO (intervention order legislation) should proceed, the Court must direct the principal registrar of the Court to cause notice of the application to be given to:
 - a. the Attorney-General
 - b. the person (if any who made the application for the ELRO 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.²⁶⁷
- 6) If the Children’s Court considers that an application to vary or revoke an ELRO (intervention order legislation) should proceed, the Court must direct the principal registrar of the Court to cause notice of the application to be given to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the ELRO
 - c. the person protected by the ELRO.²⁶⁸
- 7) Upon the making of an order varying or revoking an ELRO (intervention order legislation):
 - a. the Children’s Court must ensure a copy of the order is given to the Attorney-General²⁶⁹
 - b. 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.²⁷⁰

VCAT

- 1) Upon the making of an LRO:
 - a. VCAT must give a copy of that order to the Attorney-General²⁷¹
 - b. 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.²⁷²
- 2) Upon the making of an acting in concert order:
 - a. VCAT must give a copy of that order to the Attorney-General²⁷³
 - b. 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.²⁷⁴
- 3) Upon the making of an appeal restriction order:
 - a. VCAT must give a copy of that order to the Attorney-General²⁷⁵
 - b. 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.²⁷⁶

²⁶¹ Section 49(c).

²⁶² Section 47.

²⁶³ Section 48(4).

²⁶⁴ Section 49(a).

²⁶⁵ Section 49(b).

²⁶⁶ Section 49(c).

²⁶⁷ Section 61(1), (2).

²⁶⁸ Section 68(1), (2).

²⁶⁹ Section 72(1).

²⁷⁰ Section 73(4).

²⁷¹ Section 47.

²⁷² Section 48(5).

²⁷³ Section 47.

²⁷⁴ Section 48(5).

²⁷⁵ Section 47.

²⁷⁶ Section 48(5).

- 4) If VCAT considers that an application for leave to proceed, other than an application for leave to proceed under an ELRO (intervention order legislation), should proceed, VCAT must direct the applicant for leave to proceed to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO 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.²⁷⁷
- 5) If VCAT considers that an application to vary or revoke an LRO, other than an application to vary or revoke an ELRO (intervention order legislation), should proceed, VCAT must direct the applicant for variation or revocation to give notice of the application to:
 - a. the Attorney-General
 - b. the person (if any) who made the application for the LRO
 - c. the person (if any) who is protected by the LRO.²⁷⁸
- 6) Upon the making of an order varying or revoking an LRO:
 - a. VCAT must ensure a copy of the order is given to the Attorney-General²⁷⁹
 - b. 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.²⁸⁰

VOCAT

If VOCAT considers that an application for leave to proceed, other than an application for leave to proceed under an ELRO (intervention order legislation), should proceed, VOCAT must direct the applicant for leave to proceed to give notice of the application to:

- 1) the Attorney-General
- 2) the person (if any) who made the application for the LRO to which the application for leave to proceed relates
- 3) any person named in the interlocutory application or the proceeding to which the application for leave to proceed relates.²⁸¹

²⁷⁷ Section 60(1), (2).

²⁷⁸ Section 67(1), (2).

²⁷⁹ Section 72.

²⁸⁰ Section 73(5), (6).

²⁸¹ Section 60(1), (2).