

Injunctions – Furthering your client’s interests

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Types of Injunctions

1. Final, interlocutory and interim
2. Prohibitive and mandatory
3. Inters parte and ex parte

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Interlocutory Injunctions – Legal Test

1. *Bradto Pty Ltd v State of Victoria* (2006) 15 VR 65 at [35]:
“... the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been ‘wrong’, in the sense of granting an injunction to a party who fails to establish his right at the trial, or in failing to grant an injunction to a party who succeeds at trial.”
2. Serious question to be tried
3. Balance of convenience
 - a) Prejudice to Plaintiff and Defendant
 - b) Strength of the prima facie case
 - c) Inadequacy of damages
 - d) Injury to 3rd parties
(not an exhaustive list of consideration)

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Interlocutory Injunctions – Legal Test – ctd.

1. Court's discretion – Equitable defences
 - a) Unclean hands
 - b) Laches (delay)
 - c) Acquiescence
(not an exhaustive list)
2. Mandatory injunctions
3. Interlocutory injunction amounting to final relief

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Before diving in...

1. Try to resolve with the other side
2. What order(s) does the client desire – narrow framing
3. How urgent is it?
4. Service?

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Undertaking as to damages

1. Critical for solicitor to advise client and take instructions at an early stage
2. Supreme Court
"To abide by any order the Court may make as to damages, in case the Court shall hereafter be of the opinion that any person shall have sustained any loss, by reason of this order, which the party giving the undertaking ought to pay."
Practice Note SC CC 1

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Undertaking as to damages cont

3. Federal Court
 - a) *“(a) to submit to such order (if any) as the Court may consider to be just for the payment of compensation, (to be assessed by the Court or as it may direct), to any person, (whether or not that person is a party), affected by the operation of the order or undertaking or any continuation (with or without variation) of the order or undertaking; and*
 - b) *(b) to pay the compensation referred to in (a) to the person affected by the operation of the order or undertaking.”*
 - c) Practice Note GPN-UNDR
4. *Love v Thwaites (No 4) [2014] VSCA 56*
5. *European Bank Ltd v Evans (2010) 240 CLR 432*

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Interlocutory Injunctions - Forms

1. Originating Process (not necessary for very urgent injunctions) (can be prepared by solicitor or counsel)
2. Summons/application (can be prepared by solicitor or counsel)
3. Supporting affidavit (usually prepared by solicitor and settled by counsel)
4. Draft minute of order (usually prepared by counsel)
5. Submissions (usually prepared by counsel)

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Urgent Injunctions

1. Where to file?
 - a) Supreme Court
 - b) Federal Court
 - c) County Court?
 - d) VCAT?
2. How to do it:
 - a) Supreme Court
 - i. Commercial Division
 - ii. Common Law Division
 - b) Federal Court
 - c) County Court
 - d) VCAT
3. Outside of hours

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Final Injunctions

1. Cause of action (breach of contract, breach of confidence etc)
2. Damages inadequate
3. Discretion – equitable defences

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Water Act 1989 Injunctions

Section 19

Jurisdiction of Tribunal

(1) The Tribunal has jurisdiction in relation to all causes of action (other than any claim for damages for personal injury) arising under sections 15(1), 16, 17(1) and 157(1) of this Act or at common law in respect of the escape of water from a private dam.

(3) In exercising jurisdiction conferred by subsection (1), the Tribunal—

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Water Act 1989 Injunctions ctd.

(a) may by order, whether interim or final, grant an injunction (including one to prevent an act that has not yet taken place) if it is just and convenient to do so; or

(ab) may make an order for payment of a sum of money awarding damages in the nature of interest; or

(b) may make an order that is merely declaratory.

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Water Act 1989 Injunctions ctd.

Section 15

Civil liability for unauthorised taking or use of water or for unauthorised works

- (1) A person who—
- (a) takes water in an unauthorised manner or in unauthorised quantities; or
 - (b) uses water in an unauthorised manner or for an unauthorised purpose; or
 - (c) pollutes water, whether or not authorised to do so; or
 - (d) constructs, maintains or operates any unauthorised works—

and by that act causes injury to any other person or damage to the property (whether real or personal) of any other person or causes any other person to suffer economic loss is liable to pay damages to that other person in respect of that injury or damage.

...

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Water Act 1989 Injunctions ctd.

Section 16

Liability arising out of flow of water etc.

- (1) If—
- (a) there is a flow of water from the land of a person onto any other land; and
 - (b) that flow is not reasonable; and
 - (c) the water causes—
 - (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any other person; or
 - (iii) any other person to suffer economic loss—

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Water Act 1989 Injunctions ctd.

the person who caused the flow is liable to pay damages to that other person in respect of that injury, damage or loss.

- (2) If—
- (a) a person interferes with a reasonable flow of water onto any land or by negligent conduct interferes with a flow of water onto any land which is not reasonable; and
 - (b) as a result of that interference water causes—
 - (i) injury to any other person; or
 - (ii) damage to the property (whether real or personal) of any other person;
- or
- (iii) any other person to suffer economic loss—

the person who interfered with the flow is liable to pay damages to that other person in respect of that injury, damage or loss.

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Water Act 1989 Injunctions ctd.

Section 157

Liability of Authorities arising out of flow of water

(1) If—

(a) as a result of intentional or negligent conduct on the part of an Authority in the exercise of a function under Part 8, Part 9, Division 2, 3 or 5 of Part 10, or Part 11 or any corresponding previous enactment, a flow of water occurs from its works onto any land; and

(b) the water causes—

(i) injury to any other person; or

(ii) damage to the property (whether real or personal) of any other person; or

(iii) any other person to suffer economic loss—

the Authority is liable to pay damages to that other person in respect of that injury, damage or loss.
