

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.30 a.m.]: I move:

That this bill be now agreed to in principle.

The Vexatious Proceedings Bill 2008 is designed to expand the powers of the courts to control vexatious litigants. The proposed new legislation is based upon model legislation approved by the Standing Committee of Attorneys General. Both Queensland and the Northern Territory have introduced legislation consistent with the model bill. The Government recognises the harm caused to, and costs incurred by, opposing parties and other participants in the justice system as a result of persistent litigation by vexatious litigants. Vexatious litigants abuse court processes by repetitively pursuing frivolous applications, raising spurious defences, refusing reasonable settlement offers, failing to pay costs after being ordered to do so, and launching unmeritorious appeals. These actions impinge on the effectiveness and efficiency of the justice system and make the process more expensive for everyone. Innocent parties can be dragged through the courts, often at great financial and emotional cost.

Both the New South Wales Supreme Court and the Land and Environment Court currently have the power to make orders relating to a vexatious litigant. The relevant provisions provide that the Attorney General or an aggrieved person may seek orders to restrain a vexatious litigant from continuing any proceedings or from bringing fresh proceedings in any New South Wales court except by leave. The Supreme Court may also make orders relating to a vexatious litigant who has instituted proceedings in any inferior court. However, these provisions are limited in operation. The proposed legislation continues the power of the Supreme Court and the Land and Environment Court to make orders. It now also enables the Industrial Relations Commission in Court Session to make orders in relation to vexatious litigants. Under the New South Wales Constitution Act 1902, these courts are superior courts of record of equivalent status. It is therefore appropriate that they be authorised to make vexatious proceedings orders. However, given the more specialist nature of the Land and Environment Court and the Industrial Relations Commission, their ability to make orders will be limited to proceedings in their respective jurisdictions. Consistent with the model bill, the Supreme Court will deal with applications for orders against a person who has commenced proceedings in any other court or tribunal.

The bill enables applications to be made to an authorised court for a vexatious proceedings order. Currently, the Attorney General or the person forced into wrongful litigation—the aggrieved person—may make an application to the court for an order to restrain a vexatious litigant. The bill expands the range of people who may apply for a vexatious proceedings order to include the Solicitor General and the registrar of the relevant court. The bill also allows people who have a sufficient interest in the matter to apply to the court for an appropriate order. However, to ensure there is no abuse of this process, people claiming a sufficient interest must first obtain the leave of the court to make the application. Current New South Wales legislation provides that a court may only make an order to restrain a vexatious litigant where a person "habitually and persistently and without any reasonable grounds" institutes vexatious legal proceedings. This is a stricter threshold test than that adopted under the new Queensland and Northern Territory Acts and by the High Court.

The proposed new legislation follows the approach taken in those jurisdictions by providing that the court may make a vexatious proceedings order if it is satisfied that a person has "frequently" instituted or conducted vexatious proceedings in Australia. The new test has been deliberately chosen to make it easier to obtain a vexatious proceedings order against a vexatious litigant. In applying this simplified test, the court may have regard to proceedings instituted in, or orders made by, any Australian court or tribunal. In addition, the court may make an order when a person is acting in concert with a person who is the subject of a vexatious proceedings order or has frequently instituted or conducted vexatious proceedings. That could include, but is not limited to, a relative or associate who may institute proceedings on behalf of the vexatious litigant. To ensure that the person's rights are protected, the person must be given the opportunity to be heard in relation to the matter. When a vexatious proceedings order is made the court can order a stay of all, or part, of any proceedings already instituted by the person, or prohibit the person from instituting proceedings.

The court can also make any other orders that it thinks fit—for example, an order directing that the person may only file documents by mail or give security for costs. A vexatious proceedings order may be varied or set aside by order of the court of its own motion or following an application. An authorised court may also reinstate a vexatious proceedings order prohibiting a person from instituting proceedings if the court is satisfied that, within five years of the order having been set aside, the person has instituted or conducted vexatious proceedings in an Australian court or tribunal, or acted in concert with another person who has done so. A person who is the subject of a vexatious proceedings order or a person acting in concert with such a person may apply to the appropriate authorised court for leave to institute proceedings that are the subject of an order. The court may dispose of such an application by either dismissing the application or granting it. Consistent with legislation in Queensland and the Northern Territory, there is no appeal from a decision disposing of the application. The second reading speech introducing the legislation into the Northern Territory Parliament relevantly stated the

rationale for this element of the model bill in this way:

there is no appeal from the decision of the court to dismiss the application. A decision by the Supreme Court is made after consideration of all the relevant facts. It is considered necessary to block off another avenue of appeal, as vexatious litigants tend by their nature to take action in any way possible to question a court's decision, regardless of the merit of their position.

The bill also provides for the establishment of a register of vexatious proceedings orders and related orders. The register will be maintained by the Supreme Court on behalf of all authorised courts. The register will be accessible by the legal profession and members of the public and published on the court's website. The proposed new legislation will enhance the court's ability to control vexatious litigants in a number of ways. The first is allowing an authorised court to take into account any proceedings that a vexatious litigant may have brought in any Australian court or tribunal; secondly, allowing the court to make orders where proceedings have been instituted in a tribunal; thirdly, clarifying both the powers of the court and its procedures; fourthly, setting out comprehensive definitions; and, lastly, enabling orders to be made in relation to people who may be acting in concert with a vexatious litigant.

The Vexatious Proceedings Bill seeks to protect the fundamental right of citizens to approach the courts to seek justice in accordance with the law while preserving the efficiency of the justice system and shielding other participants in the justice system from unmeritorious actions. The proposed new legislation will achieve greater consistency with other Australian States and Territories in dealing with vexatious litigants. The bill has been the subject of extensive consultation with stakeholders, including the heads of jurisdiction and the legal profession. I commend the bill to the House.