



New South Wales

# Vexatious Proceedings Amendment (Statutory Review) Bill 2017

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Vexatious Proceedings Act 2008* to give effect to recommendations arising from the statutory review of that Act. This is achieved as follows:

- (a) by making it clear that references to proceedings include civil proceedings, criminal proceedings and proceedings before a tribunal and also include any interlocutory proceedings or applications, or procedural applications, taken in connection with or incidental to such proceedings,
- (b) by making it clear that a court determining whether or not to make a vexatious proceedings order is to have regard to the effect that the conduct of the person who will be subject to the order had on earlier proceedings, and not just to the intention of the litigant, and may have regard to evidence of decisions or findings of fact of another Australian court or tribunal (which would ordinarily be inadmissible),
- (c) by providing that, unless a vexatious proceedings order expressly states otherwise, the order prohibits the making of interlocutory and procedural applications within civil proceedings (as well as prohibiting the initiation of proceedings) but does not prevent a person from making applications, or conducting proceedings, within criminal proceedings that have been brought against that person or from making bail applications,
- (d) by allowing a court to decline to consider a vexatious litigant's application to vary or set aside an existing vexatious proceedings order, or application for leave to institute proceedings otherwise prohibited by the order, if the applications are not materially different from an earlier, unsuccessful application,

- (e) by making it clear that a court considering an application by a person who is subject to a vexatious proceedings order for leave to institute proceedings that are otherwise prohibited by that order is not required to hold an oral hearing before dismissing the application,
- (f) by providing that, unless a grant of leave to institute proceedings that are otherwise prohibited by a vexatious proceedings order expressly states otherwise, the grant of leave extends to allow the person the subject of the order to make interlocutory or procedural applications within those proceedings.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Vexatious Proceedings Act 2008 No 80**

### **Matters that authorised courts are to consider before making vexatious proceedings orders**

**Schedule 1 [1]** provides that references in the Act to *proceedings* include:

- (a) civil proceedings, criminal proceedings and proceedings before a tribunal, and
- (b) any interlocutory proceedings or applications, or procedural applications, taken in connection with or incidental to such proceedings.

This will make it clear that:

- (a) for the purposes of determining whether a litigant has frequently instituted or conducted vexatious proceedings, an authorised court (that is, the Supreme Court or the Land and Environment Court) is to consider any of that broader range of proceedings that the litigant has previously instituted or conducted, and
- (b) a vexatious proceedings order may prohibit the litigant from instituting any of that broader range of proceedings.

**Schedule 1 [2]** makes it clear that, when determining whether or not to make a vexatious proceedings order, an authorised court is to have regard to the effect of a litigant's conduct on earlier proceedings. This will mean that the court will have regard to whether those proceedings were conducted in a way that harassed or caused unreasonable annoyance, delay or detriment, whether or not that was the intention of the person whose conduct is being considered.

**Schedule 1 [3]** provides that, when an authorised court has regard to the past orders of other courts and tribunals for the purpose of making a vexatious proceedings order, evidence of a decision or a finding of fact of another Australian court or tribunal will be admissible to prove that a litigant has frequently commenced or conducted vexatious proceedings. (Section 91 of the *Evidence Act 1995* would otherwise operate to make such evidence inadmissible.)

### **Operation of vexatious proceedings order in relation to criminal proceedings against the person subject to order**

**Schedule 1 [4]** provides that a vexatious proceedings order:

- (a) does not stay, or prohibit a person from instituting or conducting, any criminal proceedings that are taken by the person in connection with or incidental to criminal proceedings against the person, except as expressly specified in the order, and
- (b) does not stay, or prohibit a person from making, a bail application.

### **Dealing with repeated applications to vary or set aside vexatious proceedings orders**

**Schedule 1 [5]** allows an authorised court to decline to consider an application to vary or set aside an existing vexatious proceedings order made by the person who is the subject of the order if the court is not satisfied that the application is materially different from an earlier, unsuccessful application to vary or set aside that order.

### **Dealing with applications for leave to institute proceedings that are prohibited by vexatious proceedings orders**

**Schedule 1 [6]** allows an authorised court to decline to consider an application for leave to institute proceedings made by a person who is the subject of a vexatious proceedings order that would otherwise prohibit that conduct, if the court is not satisfied that the application is materially different from a previous application for leave that was dismissed as vexatious or for not providing a prima facie ground for proceedings.

**Schedule 1 [7]** provides that an authorised court is not required to hold an oral hearing before dismissing an application for leave to institute proceedings made by a person who is the subject of a vexatious proceedings order.

**Schedule 1 [8]** makes it clear that a grant of leave by an authorised court to institute proceedings includes a grant of leave to make interlocutory or procedural applications within those proceedings, unless the court specifies that it does not.

### **Savings and transitional provisions**

**Schedule 1 [9]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and any other Act that amends the *Vexatious Proceedings Act 2008*.

**Schedule 1 [10]** makes savings provisions that:

- (a) extend the operation of the proposed amendments about the matters that authorised courts are to consider before making vexatious proceedings orders, to make it clear that courts can consider conduct that occurred before the commencement of the proposed amendment, and
- (b) extend to existing vexatious proceedings orders the operation of amendments about the impact of vexatious proceedings orders on criminal proceedings and bail applications, and
- (c) extend the operation of the proposed amendment about how authorised courts are to deal with applications for the variation or setting aside of vexatious proceedings orders to applications made but not finally determined before the commencement of the amendment, and
- (d) extend the operation of the proposed amendments about how authorised courts are to deal with applications for the grant of leave to initiate proceedings to applications made but not finally determined before the commencement of the amendments.