



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.



New South Wales

Vexatious Proceedings Amendment (Statutory Review) Bill 2017

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New South Wales

Vexatious Proceedings Amendment (Statutory Review) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Vexatious Proceedings Act 2008* to make further provision for the making, variation and setting aside of vexatious proceedings orders and the granting of leave to institute proceedings prohibited by such orders.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Vexatious Proceedings Amendment (Statutory Review) Act 2017*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Vexatious Proceedings Act 2008	1
	No 80	2
[1] Section 4		3
	Omit the section. Insert instead:	4
4 Meaning of “proceedings”		5
	In this Act, <i>proceedings</i> includes:	6
	(a) any civil proceedings, criminal proceedings or proceedings before a tribunal, and	7
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	(b) any cause, matter, action, suit, proceedings, trial, complaint or inquiry of any kind within the jurisdiction of any court or tribunal, and	9
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	(c) any proceedings taken in connection with or incidental to proceedings pending before a court or tribunal, and	11
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	(d) any interlocutory proceedings or applications, or procedural applications, taken in connection with or incidental to civil proceedings, criminal proceedings or proceedings before a tribunal, and	13
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	(e) any calling into question of a decision, whether or not a final decision, of a court or tribunal, and whether by appeal, challenge, review or in another way.	16
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[2] Section 6 Meaning of “vexatious proceedings”		19
	Omit section 6 (d). Insert instead:	20
	(d) proceedings that are conducted to achieve a wrongful purpose, or in a way that harasses, or causes unreasonable annoyance, delay or detriment, regardless of the subjective intention or motive of the person who instituted the proceedings.	21
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[3] Section 8 Making of vexatious proceedings order		25
	Insert at the end of section 8 (2) (b):	26
	, and	27
	(c) evidence of the decision, or a finding of fact, of any Australian court or tribunal hearing such proceedings or making such orders, even if that evidence would otherwise not be admissible by virtue of section 91 of the <i>Evidence Act 1995</i> .	28
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[4] Section 8 (9) and (10)		32
	Insert after section 8 (8):	33
	(9) A vexatious proceedings order 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.	34
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	(10) A vexatious proceedings order does not stay, or prohibit a person from making, a bail application (within the meaning of the <i>Bail Act 2013</i>).	38
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	Note. Section 73 of the <i>Bail Act 2013</i> provides that a court may refuse to hear a bail application if satisfied that the application is frivolous or vexatious, is without substance or otherwise has no reasonable prospect of success.	40
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[5] Section 9 Order may be varied or set aside	1
Insert after section 9 (3):	2
(4) An authorised court may decline to consider an application to vary or set aside a vexatious proceedings order made by the person subject to the order if the court is not satisfied that the application is materially different from an earlier application to vary or set aside the same order that was not successful.	3 4 5 6
[6] Section 14 Application for leave to institute proceedings	7
Insert after section 14 (4):	8
(4A) An authorised court may decline to consider an application made under this section if the court is not satisfied that the application is materially different from an earlier application under this section that was dismissed under section 15 (1) (b) or (c).	9 10 11 12
[7] Section 15 Dismissing application for leave	13
Omit section 15 (2). Insert instead:	14
(2) The application may be dismissed:	15
(a) even if an oral hearing is not held, or	16
(b) even if the applicant does not appear at any hearing of the application.	17
[8] Section 16 Granting application for leave	18
Insert after section 16 (4):	19
(4A) A grant of leave to institute proceedings made under this section includes leave to make interlocutory applications, and other procedural applications, in connection with or incidental to those proceedings, unless the grant of leave specifies otherwise.	20 21 22 23
(4B) However, a grant of leave to institute proceedings does not include leave to make the following applications (unless the grant of leave specifically extends to such applications):	24 25 26
(a) an application to join a new party to the proceedings,	27
(b) an application to introduce into the pleadings for the proceedings a substantially new cause of action based on facts different from those already pleaded,	28 29 30
(c) an application to remove the proceedings from one court or tribunal to another.	31 32
[9] Schedule 1 Savings, transitional and other provisions	33
Omit clause 1 (1). Insert instead:	34
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	35 36

[10] Schedule 1, Part 3	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of Vexatious Proceedings Amendment (Statutory Review) Act 2017	3
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5 Definition	6
In this Part:	7
2017 amending Act means the <i>Vexatious Proceedings Amendment (Statutory Review) Act 2017</i> .	8
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6 Amendments about when orders may be made extend to past conduct	10
The amendments made to sections 4, 6 and 8 (2) by the 2017 amending Act extend to conduct and proceedings occurring before the commencement of the amendments.	11
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7 Amendments about criminal proceedings extend to existing orders	14
Section 8 (9) and (10), as inserted by the 2017 amending Act, extend to vexatious proceedings orders in force immediately before those commencement of the subsections.	15
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8 Amendments about dealing with certain applications extend to existing applications	18
	19
(1) The amendment made to section 9 by the 2017 amending Act extends to an application made under section 9 but not finally determined before the commencement of that amendment.	20
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(2) The amendments made to sections 14, 15 and 16 by the 2017 amending Act extend to an application made under section 14 but not finally determined before the commencement of those amendments.	23
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