

Passed by both Houses



New South Wales

Vexatious Proceedings Amendment (Statutory Review) Bill 2018

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Vexatious Proceedings Amendment (Statutory Review) Bill 2018

Act No , 2018

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Vexatious Proceedings Amendment (Statutory Review) Act 2018*.

2 Commencement

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

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

[1] **Section 4**

Omit the section. Insert instead:

4 Meaning of “proceedings”

In this Act, *proceedings* includes:

- (a) any civil proceedings, criminal proceedings or proceedings before a tribunal, and
- (b) any cause, matter, action, suit, proceedings, trial, complaint or inquiry of any kind within the jurisdiction of any court or tribunal, and
- (c) any proceedings taken in connection with or incidental to proceedings pending before a court or tribunal, and
- (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
- (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.

[2] **Section 6 Meaning of “vexatious proceedings”**

Omit section 6 (d). Insert instead:

- (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.

[3] **Section 8 Making of vexatious proceedings order**

Insert at the end of section 8 (2) (b):

- , and
- (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 *Evidence Act 1995*.

[4] **Section 8 (9) and (10)**

Insert after section 8 (8):

- (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.
- (10) A vexatious proceedings order does not stay, or prohibit a person from making, a bail application (within the meaning of the *Bail Act 2013*).

Note. Section 73 of the *Bail Act 2013* 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.

[5] Section 9 Order may be varied or set aside

Insert after section 9 (3):

- (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.

[6] Section 14 Application for leave to institute proceedings

Insert after section 14 (4):

- (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).

[7] Section 15 Dismissing application for leave

Omit section 15 (2). Insert instead:

- (2) The application may be dismissed:
 - (a) even if an oral hearing is not held, or
 - (b) even if the applicant does not appear at any hearing of the application.

[8] Section 16 Granting application for leave

Insert after section 16 (4):

- (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.
- (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):
 - (a) an application to join a new party to the proceedings,
 - (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,
 - (c) an application to remove the proceedings from one court or tribunal to another.

[9] Schedule 1 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (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.

[10] Schedule 1, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Vexatious Proceedings Amendment (Statutory Review) Act 2018

5 Definition

In this Part:

2018 amending Act means the *Vexatious Proceedings Amendment (Statutory Review) Act 2018*.

6 Amendments about when orders may be made extend to past conduct

The amendments made to sections 4, 6 and 8 (2) by the 2018 amending Act extend to conduct and proceedings occurring before the commencement of the amendments.

7 Amendments about criminal proceedings extend to existing orders

Section 8 (9) and (10), as inserted by the 2018 amending Act, extend to vexatious proceedings orders in force immediately before those commencement of the subsections.

8 Amendments about dealing with certain applications extend to existing applications

- (1) The amendment made to section 9 by the 2018 amending Act extends to an application made under section 9 but not finally determined before the commencement of that amendment.
- (2) The amendments made to sections 14, 15 and 16 by the 2018 amending Act extend to an application made under section 14 but not finally determined before the commencement of those amendments.