

Passed by both Houses



New South Wales

Vexatious Proceedings Bill 2008

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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, , 2008*



New South Wales

Vexatious Proceedings Bill 2008

Act No , 2008

An Act to make provision with respect to vexatious proceedings in the courts and tribunals of the State.

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:

Part 1 Preliminary

1 Name of Act

This Act is the *Vexatious Proceedings Act 2008*.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Definitions

(1) In this Act:

appropriate authorised court—see section 12.

appropriate registrar for an authorised court means:

- (a) in relation to the Supreme Court—the Prothonotary of the Supreme Court, or
- (b) in relation to the Land and Environment Court—the Registrar of that Court, or
- (c) in relation to the Industrial Court—the Industrial Registrar within the meaning of the *Industrial Relations Act 1996*.

Australian court or tribunal means a court or tribunal of the Commonwealth or of a State or Territory.

authorised court means any of the following courts:

- (a) the Supreme Court,
- (b) the Land and Environment Court,
- (c) the Industrial Court.

decision includes determination.

institute, in relation to proceedings—see section 5.

order includes declaration and injunction.

proceedings—see section 4.

vexatious proceedings—see section 6.

vexatious proceedings order means an order made under section 8.

- (2) A reference in this Act to a **person acting in concert with another person** in instituting or conducting proceedings does not include a reference to a person who is so acting as an Australian legal practitioner or representative for the proceedings.
- (3) Notes included in this Act do not form part of this Act.

4 Meaning of “proceedings”

In this Act, *proceedings* includes:

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

5 Instituting proceedings

(1) In this Act, *institute*, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against or in relation to a party, and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal, and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender, and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

(2) A reference in this Act to instituting proceedings includes a reference to instituting:

- (a) proceedings generally, and
- (b) proceedings in relation to a particular matter, and
- (c) proceedings against or in relation to a particular person, and
- (d) proceedings in a particular court or tribunal.

6 Meaning of “vexatious proceedings”

In this Act, *vexatious proceedings* includes:

- (a) proceedings that are an abuse of the process of a court or tribunal, and
- (b) proceedings instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose, and

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Part 1 Preliminary

- (c) proceedings instituted or pursued without reasonable ground, and
- (d) proceedings conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

7 Inherent jurisdiction and powers of courts and tribunals not limited

This Act does not limit or otherwise affect any inherent jurisdiction or any powers that a court or tribunal has apart from this Act to restrict vexatious proceedings.

Part 2 Vexatious proceedings orders

8 Making of vexatious proceedings order

(1) When orders may be made

An authorised court may make an order under this section (a *vexatious proceedings order*) in relation to a person if the court is satisfied that:

- (a) the person has frequently instituted or conducted vexatious proceedings in Australia, or
- (b) the person, acting in concert with a person who is subject to a vexatious proceedings order or who is referred to in paragraph (a), has instituted or conducted vexatious proceedings in Australia.

(2) For the purposes of subsection (1), an authorised court may have regard to:

- (a) proceedings instituted or conducted in any Australian court or tribunal (including proceedings instituted or conducted before the commencement of this section), and
- (b) orders made by any Australian court or tribunal (including orders made before the commencement of this section).

(3) An authorised court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(4) Orders may be made on court's own motion or on application

An authorised court may make a vexatious proceedings order of its own motion or on the application of any of the following persons:

- (a) the Attorney General,
- (b) the Solicitor General,
- (c) the appropriate registrar for the court,
- (d) a person against or in relation to whom another person has instituted or conducted vexatious proceedings,
- (e) a person who, in the opinion of the court, has a sufficient interest in the matter.

(5) An application for a vexatious proceedings order may be made by a person referred to in subsection (4) (e) only with the leave of the authorised court.

- (6) A judicial officer, member or registrar of a court or tribunal may make a recommendation to the Attorney General that he or she consider making an application for a vexatious proceedings order in relation to a specified person.

(7) **Orders that may be made by Supreme Court**

The Supreme Court may make any one or more of the following vexatious proceedings orders in relation to a person:

- (a) an order staying all or part of any proceedings in New South Wales already instituted by the person,
- (b) an order prohibiting the person from instituting proceedings in New South Wales,
- (c) any other order that the Court considers appropriate in relation to the person.

(8) **Orders that may be made by Land and Environment Court**

The Land and Environment Court may make any one or more of the following vexatious proceedings orders in relation to a person:

- (a) an order staying all or part of any proceedings in the Court already instituted by the person,
- (b) an order prohibiting the person from instituting proceedings in the Court,
- (c) any other order that the Court considers appropriate in relation to proceedings by the person in the Court.

(9) **Orders that may be made by Industrial Court**

The Industrial Court may make any one or more of the following vexatious proceedings orders in relation to a person:

- (a) an order staying all or part of any proceedings in the Industrial Relations Commission (whether in Court Session or otherwise),
- (b) an order prohibiting the person from instituting proceedings in the Industrial Relations Commission (whether in Court Session or otherwise),
- (c) any other order that the Court considers appropriate in relation to proceedings by the person in the Industrial Relations Commission (whether in Court Session or otherwise).

9 Order may be varied or set aside

- (1) An authorised court may, by order, vary or set aside a vexatious proceedings order that the court has made.
- (2) An authorised court may make the order of its own motion or on the application of:

-
- (a) the person subject to the vexatious proceedings order, or
 - (b) a person referred to in section 8 (4).
- (3) An application may be made by a person referred to in section 8 (4) (e) only with the leave of the authorised court.

10 Order may be reinstated

- (1) An authorised court may, by order, reinstate a vexatious proceedings order prohibiting a person from instituting proceedings if:
- (a) the court made the vexatious proceedings order, and
 - (b) the court is satisfied that, within 5 years of the vexatious proceedings order being set aside, the person has:
 - (i) instituted or conducted vexatious proceedings in an Australian court or tribunal, or
 - (ii) acted in concert with another person who has instituted or conducted vexatious proceedings in an Australian court or tribunal.
- (2) An authorised court that reinstates a vexatious proceedings order may make any other order that the court considers appropriate in relation to the person, including, for example, an order varying the vexatious proceedings order.
- (3) An authorised court may make an order under this section of its own motion or on the application of a person referred to in section 8 (4).
- (4) An application may be made by a person referred to in section 8 (4) (e) only with the leave of the authorised court.
- (5) An authorised court must not reinstate a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

11 Notification and register of orders

- (1) This section applies in relation to each of the following orders (a *notifiable order*):
- (a) a vexatious proceedings order,
 - (b) an order varying or setting aside a vexatious proceedings order,
 - (c) an order reinstating a vexatious proceedings order,
 - (d) an order made under section 10 (2).
- (2) The appropriate registrar for an authorised court that makes a notifiable order must arrange for a copy of the order to be:

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Part 2 Vexatious proceedings orders

- (a) published in the Gazette within 14 days after the order is made, and
 - (b) recorded in a publicly available register kept for the purposes of this Act in the registry of the Supreme Court at Sydney within 7 days after the order is made.
- (3) The appropriate registrar for an authorised court may also arrange for details of a notifiable order that the court has made to be published in another way (for example, on an internet website).
- (4) The appropriate registrar for an authorised court may arrange for a copy of a notifiable order that the court has made to be removed from the register referred to in subsection (2) (b) if the registrar is satisfied that the person in relation to whom the order was made has died.
- (5) A failure to comply with a requirement of this section in relation to a notifiable order does not affect the validity or enforceability of the order.

Part 3 Particular consequences of vexatious proceedings orders

12 Appropriate authorised courts for granting leave

For the purposes of this Part, an *appropriate authorised court* in relation to the granting of leave to institute proceedings prohibited by a vexatious proceedings order is:

- (a) the authorised court that made the vexatious proceedings order, and
- (b) in the case of a vexatious proceedings order made by the Supreme Court that operates to prohibit proceedings being instituted in the Land and Environment Court—the Land and Environment Court, and
- (c) in the case of a vexatious proceedings order made by the Supreme Court that operates to prohibit proceedings being instituted in the Industrial Relations Commission (whether in Court Session or otherwise)—the Industrial Court.

13 Contravention of vexatious proceedings order prohibiting institution of proceedings

- (1) If an authorised court makes a vexatious proceedings order prohibiting a person from instituting proceedings:
 - (a) the person may not institute proceedings of the kind to which the order relates without the leave of an appropriate authorised court under section 16, and
 - (b) another person may not, acting in concert with the person, institute proceedings without the leave of an appropriate authorised court under section 16.
- (2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed until they are dismissed (or taken to be dismissed) under this section.
- (3) Any proceedings that are stayed by subsection (2) are taken to be dismissed by the court or tribunal in which they were instituted on the expiry of the period of 28 days after the proceedings were first instituted, unless the proceedings are sooner dismissed under subsection (4).
- (4) Without limiting subsection (2) or (3), the authorised court, or the court or tribunal in which the proceedings are instituted, may make:
 - (a) an order declaring that proceedings are proceedings to which subsections (2) and (3) apply, and

- (b) an order dismissing the proceedings before the expiry of the period referred to in subsection (3), and
 - (c) any other order in relation to the proceedings that it considers appropriate, including an order for costs.
- (5) An authorised court, or the court or tribunal in which the proceedings are instituted, may make an order under subsection (4) of its own motion or on the application of a person referred to in section 8 (4).
- (6) An application may be made by a person referred to in section 8 (4) (e) only with the leave of the authorised court or the court or tribunal in which the proceedings are instituted.

14 Application for leave to institute proceedings

- (1) This section applies to a person (*the applicant*) who is:
- (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or
 - (b) acting in concert with another person who is subject to an order referred to in paragraph (a).
- (2) The applicant may apply to an appropriate authorised court for leave to institute proceedings that the order would otherwise prohibit the person from instituting.
- (3) The applicant must file an affidavit with the application that:
- (a) lists all occasions on which the applicant has applied for leave:
 - (i) under this section, or
 - (ii) before the commencement of this section—as required by an order under section 70 of the *Land and Environment Court Act 1979* or section 84 of the *Supreme Court Act 1970*, and
 - (b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section, and
 - (c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on any person unless:
- (a) an order is made under section 16 (1) (a), and
 - (b) the copy is served in accordance with the order.
- (5) An appropriate authorised court may dispose of the application by:
- (a) dismissing the application under section 15, or

- (b) granting the application under section 16.
- (6) Despite any other Act or law, the applicant may not appeal from a decision disposing of the application.

15 Dismissing application for leave

- (1) An appropriate authorised court must dismiss an application made under section 14 for leave to institute proceedings if it considers:
 - (a) the affidavit required by section 14 (3) does not substantially comply with that subsection, or
 - (b) the proceedings are vexatious proceedings, or
 - (c) there is no prima facie ground for the proceedings.
- (2) The application may be dismissed even if the applicant does not appear at the hearing of the application.

16 Granting application for leave

- (1) Before an appropriate authorised court grants an application made under section 14 for leave to institute proceedings, it must:
 - (a) order that the applicant serve each relevant person with a copy of the application and affidavit and a notice that the person is entitled to appear and be heard on the application, and
 - (b) give the applicant and each relevant person an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the court may receive as evidence any record of evidence given, or affidavit filed, in any proceedings in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The court may grant leave to institute proceedings subject to the conditions that the court considers appropriate.
- (4) However, the court may grant leave only if it is satisfied that:
 - (a) the proceedings are not vexatious proceedings, and
 - (b) there are one or more prima facie grounds for the proceedings.
- (5) In this section:
relevant person, in relation to the applicant for leave to institute proceedings, means each of the following persons:
 - (a) the person against or in relation to whom the applicant proposes to institute the proceedings,
 - (b) the Attorney General,
 - (c) the Solicitor General,

- (d) the appropriate registrar for the authorised court that made the vexatious proceedings order concerned if the registrar applied for the order in relation to the applicant,
- (e) any person referred to in section 8 (4) (d) or (e):
 - (i) who applied for a vexatious proceedings order in relation to the applicant, and
 - (ii) who the appropriate authorised court dealing with the application considers should be served,
- (f) any person:
 - (i) who made an application in relation to the applicant under section 70 of the *Land and Environment Court Act 1979* or section 84 of the *Supreme Court Act 1970* before the commencement of this section, and
 - (ii) who the appropriate authorised court dealing with the application considers should be served.

Part 4 Miscellaneous

17 Orders limiting disclosure of matters in proceedings under this Act

- (1) In proceedings under this Act, an authorised court may, if satisfied that it is necessary to do so in order to protect the welfare of a person or for any other reason, make any one or more of the following orders:
 - (a) an order that the proceedings be conducted wholly or partly in private,
 - (b) an order prohibiting or restricting the publication or broadcasting of any report of the proceedings,
 - (c) an order prohibiting or restricting the publication of evidence given in the proceedings, whether in public or in private, or of matters contained in documents lodged or filed with the court or received in evidence before the court,
 - (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the court, or of the contents of a document lodged or filed with the court or received in evidence by the court, in relation to the proceedings.
- (2) An authorised court may make an order under subsection (1) of its own motion or on the application of a person whose welfare is at issue or another person appearing in the proceedings.
- (3) Nothing in this section limits or otherwise affects any other power that an authorised court may have apart from this section in relation to the disclosure of matters arising in or from proceedings before the court.

18 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

19 Rules of court

- (1) Rules of court may be made under relevant court procedure legislation for or with respect to the practice and procedure to be followed in respect of proceedings under this Act and any matters incidental to, or relating to, such practice and procedure.
- (2) This section does not limit the rule-making powers conferred by relevant court procedure legislation or any other legislation.

- (3) In this section:
relevant court procedure legislation means any of the following:
- (a) the *Supreme Court Act 1970*,
 - (b) the *Land and Environment Court Act 1979*,
 - (c) the *Industrial Relations Act 1996*.

20 Savings, transitional and other provisions

Schedule 1 has effect.

21 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

22 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 20)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part:

repealed vexatious litigant provision means any of the following:

- (a) section 70 of the *Land and Environment Court Act 1979*,
- (b) section 84 of the *Supreme Court Act 1970*.

3 Repealed vexatious litigant provisions continue to apply to pending applications

- (1) Subject to subclause (2), any application made under a repealed vexatious litigant provision that is pending immediately before the commencement of this Act may be continued and dealt with under the provision as if the provision had not been repealed by this Act.

- (2) If the Supreme Court or the Land and Environment Court makes an order in relation to an application continued by subclause (1) that operates to prevent a person from instituting or continuing proceedings without the leave of the Supreme Court or the Land and Environment Court, that order is, on and from the date it is made, taken to be (and to have effect as if it were) a vexatious proceedings order made under this Act by the Supreme Court or the Land and Environment Court (as the case may be), and may be varied, set aside or reinstated accordingly.

4 Certain existing orders taken to be vexatious proceedings orders

- (1) This clause applies to any order (an *existing order*) that:
- (a) was made under a repealed vexatious litigant provision, and
 - (b) is in force immediately before the commencement of this Act, and
 - (c) operates to prevent a person from instituting or continuing proceedings without the leave of the Supreme Court or the Land and Environment Court.
- (2) An existing order is taken to be (and to have effect as if it were) a vexatious proceedings order made under this Act by the Supreme Court or the Land and Environment Court (as the case may be), and may be varied, set aside or reinstated accordingly.

Schedule 2 Amendment of other Acts

(Section 21)

2.1 Land and Environment Court Act 1979 No 204

Section 70 Vexatious litigant

Omit the section.

2.2 Supreme Court Act 1970 No 52

[1] Section 84 Vexatious litigant

Omit the section.

[2] Section 101 Appeal in proceedings before the Court

Omit section 101 (2) (g).