

SECOND READING SPEECH

VEXATIOUS PROCEEDINGS BILL 2011

A vexatious litigant is a person who frequently and persistently seeks to commence litigation or interlocutory proceedings without any reasonable grounds. Such people repeat arguments which have already been rejected by the court, disregard the court's rulings, seek to use second and third courts to do what has been rejected by the first court or generally attempt to abuse the court process.

The Tasmanian courts and tribunals have, over the years, experienced some litigants of this type. Not only do these people waste public resources by taking up the court's time, they also cause harassment, annoyance and expense to those who are forced to defend matters which lack a reasonable basis.

Nevertheless, it is important to exercise care to ensure that the fundamental right of all citizens to approach the courts seeking justice in accordance with the law are maintained and that individuals are not unfairly or unnecessarily prevented from seeking legal redress where appropriate.

Mr Speaker, this Bill finds an appropriate balance. On the one hand, it restricts the actions of vexatious litigants while, on the other hand, it maintains safeguards which still allows a person who has been a vexatious litigant in some circumstances to commence a legal action where it is appropriate and well founded.

The Bill was developed through the forum of the Standing Committee of Attorneys-General, and is based on a model Bill which was developed in Queensland after much consultation with stakeholders around Australia. Although there are slight variations in the Acts which have now being implemented in

other states or territories, adopting primarily the same approach to vexatious litigants will discourage them from 'forum shopping', reduce the opportunities for litigants to act in concert, and enable similar consequences to flow from one jurisdiction to another.

Currently there are provisions in the *Supreme Court Civil Procedure Act* which allow the Court to declare a person a vexatious litigant, but this order only prevents the person initiating further proceedings in the Supreme Court.

The Bill I am introducing gives the Supreme Court the power to make a vexatious proceedings order which prohibits or limits the right of such a person to take or continue to take legal action in any court or tribunal in Tasmania.

A number of the Acts establishing courts or tribunals have provisions to deal with individual proceedings which are considered vexatious or an abuse of process. This Bill specifically provides that it does not affect any existing powers of a court or tribunal to deal with vexatious proceedings.

The Bill does however give a number of persons including the Attorney-General and the Director of Public Prosecutions as well as the registrars of the various courts and tribunals the right to apply to the Supreme Court to have a person declared a vexatious litigant and that order may have general application to all courts and tribunals.

Vexatious proceedings orders of general application to all courts and tribunals may, under the Bill, only be made by the Supreme Court. It is considered that any power to curtail a person's common law right to institute legal proceedings must only be vested in a jurisdiction's superior court. The Court can make a variety of orders which prevent or regulate further litigation by the person declared vexatious, including requiring the leave of the Supreme Court or the relevant court or

tribunal to be obtained before new proceedings are lodged or served.

A vexatious litigant may need to make an application to the Supreme Court for leave to bring or progress proceedings in any court or tribunal in Tasmania.

Before the Supreme Court can make a vexatious proceedings order, the Court must be satisfied that the person has frequently instituted or conducted vexatious proceedings, or that the person is acting in concert with such a litigant.

The definition of 'vexatious proceedings' includes proceedings that are an abuse of the process of the court, instituted to harass or annoy, cause delay or detriment, or pursued without reasonable grounds. All orders made by other courts and tribunals in Australia can be considered by the Supreme Court in reaching its determination, including orders in relation to proceedings which were instituted before the commencement of this legislation.

If the court is satisfied that the person has met the threshold test, the Supreme Court may make an order staying all or part of any proceedings already instituted by the person and/or an order prohibiting the person from instituting further proceedings in Tasmania.

Once the order is made, the person or anyone else acting in concert with the person, cannot institute further proceedings without the leave of the Court or otherwise in accordance with the order of the Court.

In addition to the Attorney-General, Director of Public Prosecutions or a registrar of a court or tribunal, members of the public who are aggrieved by vexatious litigants may also apply to the court for a vexatious proceedings order. This means that the process is accessible to all people who have

suffered as a consequence of a vexatious litigant. In order to ensure that this process is not abused, the leave of the court must first be obtained by the member of the public.

The Bill balances this limitation on the right to bring a legal action by providing that the Supreme Court may not make a vexatious proceedings order unless the person in question has had the opportunity to be heard. The Bill also provides that a person, the subject of a vexatious proceedings order, may apply to the court to have that order varied or set aside. All the people who have the right to apply for a vexatious proceedings order can also apply for a variation or for the order to be set aside.

The Supreme Court may also reinstate a vexatious proceedings order prohibiting a person from instituting proceedings which has been set aside if the Court is satisfied that, within five years of the order having been set aside, the person has instituted or conducted further vexatious proceedings in an Australian court or tribunal, or acted in concert with another person who has done so.

The Bill also ensures that a person who is the subject of a vexatious proceedings order may still initiate a legitimate legal action, such as a personal injuries claim, with the leave of the court.

However, there is no appeal from the decision of the court to dismiss an application for leave. This approaching of blocking off further avenues for appeal recognises that 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.

I commend this Bill to the House.