

CLAUSE NOTES

VEXATIOUS PROCEEDINGS BILL 2011

- Clause 1:** Short title
- Clause 2:** Commencement
- Clause 3:** Interpretation of words used in the Bill – particularly ‘Australian court or tribunal’ which includes all courts and tribunals, and also bodies that don’t fit into that description, like the Guardianship and Administration Board. Also included is a definition of ‘vexatious proceedings’.
- Clause 4:** Ensures that the existing powers for courts and tribunals to deal with vexatious litigants and litigation are preserved.
- Clause 5:** Includes a list of persons able to make application to the Supreme Court for a vexatious proceedings order, and requiring some classes of persons to seek leave from the Court before applying.
- Clause 6:** Provides for the Court to make a range of orders relating to vexatious proceedings. Provides the test for vexatiousness, and requires the Court to allow a person to be heard before making an order.
- Clause 7:** Allows the Court to set aside or vary a vexatious proceedings order on their own initiative or on application by the subject of the order or one of the people named in clause 5.

- Clause 8:** Allows the Court to reinstate a vexatious proceedings order where a person has instituted or conducted a vexatious proceeding within 5 years of a vexatious proceedings order being set aside. The reinstatement may be on the Court's initiative or on application from a person named in clause 5. The Court must allow the person to be heard. The Court may also make any other order the Court considers appropriate.
- Clause 9:** Provides that the Registrar of the Supreme Court must arrange for the publication of copies of orders made, varied, set aside or reinstated in the *Gazette* and also a publicly available register. It also allows the copy of the order to be removed from the Register where a person has died.
- Clause 10:** Provides that a person subject to an order must not institute, or have another person institute, proceedings as disallowed by the order. If proceedings are instituted, they are automatically and permanently stayed.
- Clause 11:** Allows and provides the process for a person subject to a vexatious proceedings order, or a person acting in concert with such a person, to apply to the Supreme Court for leave to institute proceedings. This clause also disallows any appeal from the decision of the Court in this matter.
- Clause 12:** Provides the criteria for the Court to dismiss an application for leave to institute proceedings, and allows the application to be

dismissed even if the applicant chooses not to appear at the hearing.

Clause 13: Sets out the process for the Court to grant leave to institute proceedings, including affidavits to be served, that the applicant and all relevant persons must be heard, and the scope of evidence permitted. This clause also includes the definition of 'relevant person' for the purposes of the section.

Clause 14: Provides that the administration of the Act is assigned to the Minister of Justice, and the responsible department is the Department of Justice.

Clause 15: Provides for the consequential amendments contained in Schedule 1.

Schedule 1: The Schedule contains amendments inserted in the individual Acts to allow the appropriate person in the Anti-Discrimination Tribunal, the Guardianship and Administration Board, the Magistrates Court (including the Administrative Appeals Division and the Civil Division), the Mental Health Tribunal and the Resource Management and Planning Appeal Tribunal to apply to the Supreme Court for a vexatious proceedings order.