

Vexatious proceedings

Note: the *Family Law Amendment (Family Violence and Other Measures) Bill 2017* was introduced into the Senate on 6 December 2017. If passed, the Bill would:

- > Allow state and territory courts to be prescribed to have the same jurisdiction in family law parenting matters as that held by state and territory courts of summary jurisdiction under Part VII of the Family Law Act.
- > Allows courts of summary jurisdiction to hear family law property matters where the value of the property is up to a new limit to be prescribed in regulations, without the parties' consent to jurisdiction.
- > Criminalise breaches of family law injunctions made for personal protection.
- > Remove the 21 day time limit on a parenting order revived, amended or suspended by a state or territory court when making an interim family violence order.
- > Strengthen and codify the power of the family law courts to dismiss unmeritorious cases and proceedings that are frivolous, vexatious or an abuse of process.
- > Remove the requirement that a court must explain certain matters to a child when it would not be in the child's best interest to receive the explanation.
- > Remove wording that suggests that conjugal rights and an obligation to perform marital services still exist in Australian law.

For updated information [click here](#).

[Section 118](#) in Part XV of the *Family Law Act 1975* (Cth) and [Section 242](#) in Part 12 of the *Family Court Act 1997* (WA) empower a court at any stage of proceedings under the Act to make an order for dismissal or as to costs if it is satisfied that the proceedings are frivolous or vexatious. While Part XIB of the *Family Law Act 1975* (Cth) (no equivalent in WA) deals specifically with vexatious proceedings, [Section 102QA](#) preserves the court's broader powers to deal with frivolous or vexatious proceedings. For the purposes of Part XIB, [Section 102Q](#) defines 'vexatious proceedings' to include proceedings in a court or tribunal that are an abuse of process; that are instituted or conducted to harass or annoy, cause detriment, or for another wrongful purpose; or are instituted or pursued without reasonable ground. [Section 102QB](#) sets out the process for the making and types of vexatious proceedings orders. The court must be satisfied as to the threshold issue that a party has frequently instituted or conducted vexatious proceedings or has acted in concert with another person who has done so. **It is not necessary for the multiple proceedings to be in the same court or tribunal**, and as such the provision serves as an important discouragement to forum shopping .

The legislative definition of vexatious proceedings reflects the understanding expressed in the 2010 joint report of the Australian Law Reform and New South Wales Law Reform Commissions [[ALRC/NSWLRC 2010](#)], *Family Violence – A National Legal Response*. While the report specifically deals with vexatious litigation in the context of state and territory protection order proceedings, it recognises the difficulties that vexatious litigation may present in domestic and family violence related proceedings generally. In particular, concerns arise where perpetrators of violence may use the legal system to further harass, control or abuse the victim. Elsewhere in this bench book, this behaviour is referred to as **systems abuse**. While any single application may not in itself be considered vexatious, it may be difficult for a court to identify the application as part of a pattern of litigious behaviour that is vexatious without also understanding the history of domestic and family violence perpetrated by the party making the application. Further underlining the difficulty associated with identifying vexatious litigation where there is a history of violence, a victim of long-term violence may, with reasonable grounds, make multiple and frequent applications, for example to enforce parenting orders that have been repeatedly breached by the perpetrator [[Chisholm 2009](#)]. Where a party is also **self-represented**, a court may need to consider the party's lack of knowledge and experience of legal concepts and processes as a legitimate contributing factor to their frequent engagement with the legal system [[Dewar et al 2000](#)].