

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Dr Deb Foskey)

Protection of Public Participation Bill 2008

A Bill for

An Act to protect and encourage participation in public debate and matters of public interest, and discourage people and corporations from bringing or maintaining legal proceedings that interfere with another person's right to engage in public participation

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Protection of Public Participation Act 2008*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see Legislation Act, s 75 (1)).

7 **3 Dictionary**

8 The dictionary at the end of this Act is part of this Act.

9 *Note 1* The dictionary at the end of this Act defines certain terms used in this
10 Act, and includes references (*signpost definitions*) to other terms
11 defined elsewhere in this Act.

12 For example, the signpost definition '*improper purpose*—see
13 section 6.' means that the term 'improper purpose' is defined in that
14 section.

15 *Note 2* A definition in the dictionary (including a signpost definition) applies to
16 the entire Act unless the definition, or another provision of the Act,
17 provides otherwise or the contrary intention otherwise appears (see
18 Legislation Act, s 155 and s 156 (1)).

19 **4 Notes**

20 A note included in this Act is explanatory and is not part of this Act.

21 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
22 notes.

1 **5 Purpose of Act**

2 The purpose of this Act is to protect and encourage public
3 participation, and discourage people from interfering with another
4 person’s right to engage in public participation by beginning or
5 maintaining, or giving notice of an intention to begin or maintain, a
6 proceeding against the other person—

7 (a) by giving a person the right to apply for a declaration from the
8 Magistrates Court that the person’s conduct constitutes public
9 participation; and

10 (b) by providing—

11 (i) an opportunity, at or before the trial of a proceeding, for
12 the Supreme Court to consider whether the proceeding (in
13 whole or in part) begun or maintained against a defendant
14 constitutes interference with the defendant’s right to
15 engage in public participation; and

16 (ii) if the Supreme Court finds that the proceeding does
17 constitute interference with that right—for the summary
18 dismissal of the proceeding and the awarding of costs to
19 the defendant; and

20 (iii) for the awarding of punitive or exemplary damages to the
21 defendant if the Supreme Court finds that the proceeding
22 was begun or maintained for an improper purpose.

23 **6 Meaning of *improper purpose*—Act**

24 For this Act, a proceeding is taken to be begun or maintained against
25 a defendant for an *improper purpose* if—

26 (a) the defendant’s conduct that would be the subject of the
27 proceeding is public participation; and

- 1 (b) when viewed on an objective basis—
- 2 (i) there is no reasonable expectation that the proceeding will
- 3 succeed; and
- 4 (ii) a purpose for beginning or maintaining the proceeding
- 5 is—
- 6 (A) to discourage the defendant (or anyone else) from
- 7 engaging in public participation; or
- 8 (B) to divert the defendant's resources away from
- 9 engagement in public participation to the
- 10 proceeding; or
- 11 (C) to otherwise punish the defendant for engaging in
- 12 public participation.

13 **7 Meaning of *public participation*—Act**

- 14 (1) In this Act:
- 15 *public participation* means conduct aimed (in whole or in part) at
- 16 influencing public opinion, or promoting or furthering action by the
- 17 public, a corporation or government entity in relation to an issue of
- 18 public interest.
- 19 (2) However, *public participation* does not include conduct—
- 20 (a) that contravenes an order of a court or constitutes contempt of
- 21 a court; or
- 22 (b) that constitutes vilification based on race, sex, sexuality,
- 23 ethnicity, nationality or creed; or
- 24 (c) that causes or threatens to cause physical injury or damage to
- 25 property; or
- 26 (d) that constitutes trespasses on a place of private residence; or

- 1 (e) if—
- 2 (i) the conduct is communication by a party to an industrial
3 dispute between an employer and employee, former
4 employee, contractor or agent; and
- 5 (ii) the communication relates to the subject matter of the
6 dispute; or
- 7 (f) advertising goods or services for commercial purposes; or
- 8 (g) that incites others to engage in conduct mentioned in
9 paragraphs (a), (b), (c) or (d).

10 **8 Right to engage in public participation**

- 11 (1) A person has the right to engage in public participation.
- 12 (2) However, it is not a defence to a prosecution for an offence that the
13 defendant's conduct constituted public participation.

14 **9 Declaration that certain conduct constitutes public
15 participation**

- 16 (1) If a person (**A**) gives notice of an intention to begin a proceeding
17 against another person (**B**) in relation to the conduct of **B**, **B** may
18 apply to the Magistrates Court for a declaration that—
- 19 (a) the conduct that would be the subject of the proceeding
20 constitutes public participation; and
- 21 (b) beginning a proceeding against **B** would be inconsistent with
22 **B**'s right under this Act to engage in public participation.
- 23 (2) An application under subsection (1)—
- 24 (a) must be served on **A**; and
- 25 (b) must be heard by the Magistrates Court not later than 30 days
26 after the day when the application is served on **A**; and
- 27 (c) may be heard in the absence of **A**.

- 1 (3) The Court may make a declaration under subsection (1) only if
2 satisfied that—
- 3 (a) B honestly and reasonably believed that the conduct was
4 justified; and
- 5 (b) the issuing of a proceeding against B would be inconsistent
6 with B's right under this Act to engage in public participation.
- 7 (4) The Magistrates Court may make the orders it considers appropriate
8 (including orders as to costs) on an application under this section.

9 **10 Dismissal of certain proceedings**

- 10 (1) A person against whom a proceeding is begun (the *defendant*) who
11 considers that the proceeding (in whole or in part) is inconsistent
12 with the defendant's right to engage in public participation under
13 this Act may apply to the Supreme Court for either or both of the
14 following orders:
- 15 (a) an order dismissing the proceeding (in whole or in part);
16 (b) an order for costs in relation to the proceeding.
- 17 (2) An application under this section must—
- 18 (a) be served on the plaintiff in the proceeding; and
19 (b) be dealt with by the Supreme Court as soon as reasonably
20 practicable.
- 21 (3) Unless the Supreme Court otherwise orders, any further application,
22 procedure or other step in the proceeding is suspended until the
23 application under this section is decided.
- 24 (4) The Supreme Court may make an order under this section if
25 satisfied that—
- 26 (a) the conduct of the defendant constitutes public participation;
27 and

1 (b) the defendant honestly and reasonably believed that the
2 conduct was justified.

3 (5) The Supreme Court may, on application by the defendant or on its
4 own initiative, in addition to the orders mentioned in subsection (1),
5 make an order for punitive or exemplary damages if satisfied that
6 the proceeding (or part of the proceeding) was begun against the
7 defendant for an improper purpose.

1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • Magistrates Court
- 7 • must (see s 146)
- 8 • proceeding
- 9 • Supreme Court
- 10 • under.

11 *conduct* includes communication.

12 *government* means the Territory, the Commonwealth, a State,
13 another Territory or a local government of a State.

14 *government entity* includes—

- 15 (a) an instrumentality, officer or employee of the government; and
- 16 (b) a contractor or anyone else who exercises a function on behalf
17 of the government.

18 *improper purpose*—see section 6.

19 *public participation*—see section 7.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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