

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

PROTECTION OF PUBLIC PARTICIPATION BILL 2008

EXPLANATORY STATEMENT

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Protection of Public Participation Bill 2008**

EXPLANATORY STATEMENT

Outline

This Bill sets up a mechanism to assess whether a law-suit is bona fide. It aims to encourage participation in public interest matters by protecting the right of the public to participate in social and political activity on a range of issues, regardless of their access to resources.

The Bill does this by allowing a defendant to apply to the court to have a case dismissed if:

- it interferes with public participation; or
- there is no reasonable expectation of the case succeeding; or
- the intent of the case is to silence public participation, to divert resources from public participation to legal proceeding or penalise for engagement in public participation.

Where a case is dismissed on such grounds the court may order the plaintiff – the party that initiated the court process – to pay costs and damages to the defendant.

In addition, where cases are not dismissed, a number of potential hurdles can be placed before the plaintiff in order to ensure the case is bona fide – these include: orders for security of the defendant’s costs and damages; provisions requiring settlement of the case to come before the court; and, capacity to apply conditions such as paying the defendants costs and damages if the proceedings are settled or discontinued out of court.

Within this Bill public participation is defined as publication or conduct aimed at influencing public opinion on issues of public interest. It does not include unlawful behaviour.

The Bill protects the rights of:

- peaceful assembly and freedom of association;
- freedom of expression; and
- participating in the conduct of public affairs.

It does not inhibit the right of the plaintiff to distribute information or otherwise advance its cause. It seeks only to prevent the plaintiff from inhibiting the freedom of expression of others (in this case the defendant.)

Clause 1

The name of the Act

Clause 2

This is a technical clause, setting out the standard commencement provision.

Clause 3 Dictionary

This clause provides that the dictionary of terms at the end of the Act forms part of the Act.

Clause 4 Notes

This clause explains that notes included in the Act are for explanatory purposes only and do not form part of the Act.

Clause 5 Purpose of the Act

This clause describes the primary purpose of the Act, which is to protect and encourage public participation, and discourage people from beginning or maintaining unmeritorious civil legal actions which are designed to discourage or prevent public participation. The Clause sets out the mechanisms by which this purpose is given effect.

Clause 6 defines the concept of ‘improper purpose’ for this Act. It is a proceeding:

- which intervenes with public participation; or
- where there is no reasonable expectation of the case succeeding; or
- where the intent of the case is to discourage public participation, to divert resources from public participation to legal proceedings or penalises engagement in public participation.

Clause 7 defines ‘public participation’ as conduct aimed at influencing public opinion on issues of public interest. For the purposes of this Act, public participation does not include behaviour by a person (or inciting others to act in such a manner) which is unlawful, intimidatory, or which causes physical injury or property damage. It also does not include conduct that constitutes trespass on a private residence, or which constitutes vilification on a number of defined grounds. Communication by a party to an Industrial dispute is also excluded from the definition of public participation.

Clause 8 creates a right to engage in public participation. The Clause also clarifies that the right does not constitute a defence to a prosecution.

Clause 9 provides that when a person receives notice that another person intends to commence legal proceedings against them in relation to some specified conduct, the person receiving the notice has a right to seek a declaration from the Magistrates Court that their impugned conduct constituted public participation.

An application for a hearing under Clause 9 must be served on the other party (the respondent) and must be heard within 30 days from the date the application was served on the respondent. The application may be heard *ex parte*.

A court may only make a declaration under this section if satisfied that the applicant honestly and reasonably believed that their conduct was justified, and that the issuing proceedings would be inconsistent with the applicants’ right to engage in public participation.

Clause 10 allows a defendant to apply to the Supreme Court for costs orders, or to have a proceeding dismissed in whole or in part, if they consider that it is being brought or maintained for an improper purpose. The court must deal with the application as soon as is reasonably practicable. The proceeding cannot progress until the application for dismissal has been decided.

The Supreme Court may make an order dismissing the proceeding if satisfied that the applicant’s conduct constitutes public participation, and that the proceeding begun for improper purposes.

Clause 10 also provides that, in addition to any other orders it can make, the Supreme may also make orders for punitive or exemplary damages, if satisfied that the proceedings were

begun for an improper purpose.