

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

**COURT PROCEDURES (PROTECTION OF PUBLIC
PARTICIPATION) AMENDMENT BILL 2005**

EXPLANATORY STATEMENT

**Circulated by authority of
Deb Foskey MLA**

Court Procedures (Protection of Public Participation) Amendment Bill 2005

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 intervenes 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

This is a technical clause setting out the Act's amendment. The principal Act amended is the *Courts Procedures Act 2004*.

Clause 4

Clause 4 inserts a new division into Part 4 of the Act.

This new division creates provisions that allow a defendant to apply to the court to have a case dismissed if the proceeding is brought or maintained for the improper purpose of limiting public participation.

Clause 37A sets out the objects of Part 4A which in summary are to encourage public participation and deter people from starting cases which improperly interfere with public participation.

Clause 37B provides definitions for Part 4A.

Clause 37C sets out the concept of ‘improper purpose’ that 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 silence public participation, to divert resources from public participation to legal proceedings or penalises engagement in public participation.

Clause 37D defines ‘public participation’ as publication or conduct aimed at influencing public opinion on issues of public interest. It does not include unlawful behaviour.

Clause 37E allows a defendant to apply to the court to have a case dismissed if they consider the proceeding against them is brought or maintained for an improper purpose. Applications for dismissal must be made within 60 days of the proceeding starting and the court must deal with the application as soon as possible. The proceeding cannot progress until the application for dismissal has been decided.

Clause 37F provides that the court may make an order dismissing the proceeding if on the balance of probabilities the proceeding was commenced or continued for improper purposes. It also provides that where a case is dismissed on grounds of improper purpose the court may order the plaintiff – the person that started the court process – to pay costs and damages to the defendant. In addition where an order for dismissal is not made but the court is satisfied that there are grounds of improper purpose the court may: order the plaintiff to provide security of costs for the defendants costs and damages; or, order that the case not be settled or discontinued without the approval of the court. The court can impose conditions it considers appropriate.

Clauses 37G and 37H set out the mechanism and situations by which the court can order the plaintiff to pay the costs of the defendant’s costs in relation to the case.

Clause 37I allows both parties and other parties to present evidence and arguments for their case.

Clause 37J provides that costs to be paid to the defendant as a consequence of this new Part 4 of the Act can be paid out of any security for costs paid under an order via section 37F (3)(a).