



Australian Capital Territory

# **Protection of Public Participation Act 2008**

**A2008-48**

**Republication No 5**

**Effective: 24 August 2016**

Republication date: 24 August 2016

Last amendment made by [A2016-49](#)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Protection of Public Participation Act 2008* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 24 August 2016. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 24 August 2016.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Protection of Public Participation Act 2008

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Australian Capital Territory

# Protection of Public Participation Act 2008

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An Act about protection for participation in public debate and matters of public interest

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**1 Name of Act**

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

**3 Dictionary**

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

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

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

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

**4 Notes**

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

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

**5 Purpose of Act**

The purpose of this Act is to protect public participation, and discourage certain civil proceedings that a reasonable person would consider interfere with engagement in public participation.

## 6 **Meaning of *improper purpose***

For this Act, a proceeding is started or maintained against a person (the *defendant*) for an *improper purpose* if a reasonable person would consider that the main purpose for starting or maintaining the proceeding is—

- (a) to discourage the defendant (or anyone else) from engaging in public participation; or
- (b) to divert the defendant's resources away from engagement in public participation to the proceeding; or
- (c) to punish or disadvantage the defendant for engaging in public participation.

## 7 **Meaning of *public participation***

- (1) In this Act:

*public participation* means conduct that a reasonable person would consider is intended (in whole or part) to influence public opinion, or promote or further action by the public, a corporation or government entity in relation to an issue of public interest.

- (2) However, *public participation* does not include conduct—

- (a) that contravenes a court order or constitutes contempt of court; or
- (b) that constitutes unlawful vilification under the [Discrimination Act 1991](#), section 67A; or
- (c) that constitutes an offence against the [Criminal Code](#), section 750 (Serious vilification); or
- (d) that causes, or is reasonably likely to cause, physical injury or damage to property; or
- (e) that constitutes unlawful entry at residential premises; or

- (f) that constitutes an offence punishable by imprisonment for longer than 12 months; or
  - (g) if—
    - (i) the conduct is communication by a party to an industrial dispute between an employer and employee, former employee, contractor or agent; and
    - (ii) the communication relates to the subject matter of the dispute; or
  - (h) that constitutes the advertising of goods or services for commercial purposes; or
  - (i) that incites others to engage in conduct mentioned in paragraphs (a), (b), (c), (d), (e) or (f).
- (3) Subsection (2) applies in relation to a person's conduct whether or not the person has been convicted or found guilty of an offence for the conduct.

## **8 Application of Act**

- (1) This Act applies in relation to a civil proceeding in the Supreme Court or Magistrates Court in which the plaintiff may claim damages.
- (2) However, this Act does not apply in relation to any of the following:
  - (a) a cause of action for defamation;
  - (b) a proceeding prescribed by regulation.

## 9 Civil penalty

- (1) This section applies if—
  - (a) a person (the *plaintiff*) starts or maintains a proceeding to which this Act applies against someone else (the *defendant*) in relation to the defendant's conduct; and
  - (b) the court is satisfied that—
    - (i) the defendant's conduct is public participation; and
    - (ii) the proceeding is started or maintained against the defendant for an improper purpose.
- (2) The court may order the plaintiff to pay to the Territory a financial penalty of not more than the amount (if any) prescribed by regulation.
- (3) The financial penalty must be worked out in accordance with a regulation.
- (4) The court may make an order under subsection (2)—
  - (a) on application by the Territory; or
  - (b) on its own initiative.

*Note* If a proceeding is for an improper purpose, the court's power to award costs of the proceeding includes power to order that the costs be assessed on an indemnity basis (see *Court Procedures Rules 2006*, r 1752).

## 10 Regulation-making power

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- Magistrates Court
- must (see s 146)
- proceeding
- Supreme Court
- under.

***conduct*** includes communication.

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

***government entity*** includes—

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

***improper purpose***—see section 6.

***public participation***—see section 7.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Protection of Public Participation Act 2008 A2008-48**

notified LR 11 September 2008

s 1, s 2 commenced 11 September 2008 (LA s 75 (1))

remainder commenced 12 September 2008 (s 2)

as amended by

#### **Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.44**

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

sch 3 pt 3.44 commenced 12 December 2011 (s 2)

#### **Discrimination Amendment Act 2016 A2016-49 sch 1 pt 1.4**

notified LR 23 August 2016

s 1, s 2 commenced 23 August 2016 (LA s 75 (1))

sch 1 pt 1.4 commenced 24 August 2016 (s 2 (1))

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Meaning of *public participation***

s 7 am [A2016-49](#) amdt 1.21, amdt 1.22; pars renum R5 LA

#### **Application of Act**

s 8 s (2) (c), (3) exp 12 September 2009 (s 8 (3))

#### **Civil penalty**

s 9 am [A2011-52](#) amdt 3.165

#### **Review of Act**

s 11 exp 1 January 2014 (s 11 (3))

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 12 Sept 2008	12 Sept 2008– 12 Sept 2009	not amended	new Act
R2 13 Sept 2009	13 Sept 2009– 11 Dec 2011	not amended	commenced expiry
R3 12 Dec 2011	12 Dec 2011– 1 Jan 2014	<a href="#">A2011-52</a>	amendments by <a href="#">A2011-52</a>
R4 2 Jan 2014	2 Jan 2014– 23 Aug 2016	<a href="#">A2011-52</a>	expiry of provision (s 11)

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