



Australian Capital Territory

Protection of Public Participation Act 2008

A2008-48

Republication No 1

Effective: 12 September 2008 – 12 September 2009

Republication date: 12 September 2008

Act not amended

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 12 September 2008. It also includes any amendment, repeal or expiry affecting the republished law.

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):

- 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 does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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 *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Protection of Public Participation Act 2008

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Australian Capital Territory

Protection of Public Participation Act 2008

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

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*; or
- (c) that causes, or is reasonably likely to cause, physical injury or damage to property; or
- (d) that constitutes unlawful entry at residential premises; or
- (e) that constitutes an offence punishable by imprisonment for longer than 12 months; or
- (f) 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

- (g) that constitutes the advertising of goods or services for commercial purposes; or
 - (h) that incites others to engage in conduct mentioned in paragraphs (a), (b), (c), (d) or (e).
- (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;
 - (c) a proceeding that is started in the Supreme Court or Magistrates Court before the day this Act commences.
- (3) Subsection (2) (c) and this subsection expire 1 year after the day this Act commences.

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.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177 and *Court Procedures Act 2006*, s 20, def **judgment** and s 31).

- (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.

11 Review of Act

- (1) The Minister must review the operation of this Act as soon as practicable after 1 January 2012.
- (2) The Minister must present a report of the review to the Legislative Assembly within 3 months after the day the review is started.
- (3) This section expires on 1 January 2014.

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 and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

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

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

Endnotes

3 Legislation history

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)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Application of Act

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

Review of Act

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

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