



Australian Capital Territory

Protection of Public Participation Act 2008

A2008-48

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Dictionary	2
4 Notes	2
5 Purpose of Act	2
6 Meaning of <i>improper purpose</i>	3
7 Meaning of <i>public participation</i>	3
8 Application of Act	4
9 Civil penalty	5
10 Regulation-making power	5
11 Review of Act	6
 Dictionary	 7

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au



Australian Capital Territory

Protection of Public Participation Act 2008

A2008-48

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

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

1 Name of Act

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

2 Commencement

This Act commences on the day after its notification day.

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

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 Presentation speech

Presentation speech made in the Legislative Assembly on 9 April 2008.

2 Notification

Notified under the Legislation Act on 11 September 2008.

3 Republications of amended laws

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

I certify that the above is a true copy of the Protection of Public Participation Bill 2008, which was passed by the Legislative Assembly on 27 August 2008.

Clerk of the Legislative Assembly

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