

# Protection of Public Participation Bill 2006

## A BILL FOR

An Act to protect and encourage participation in public debate and matters of public interest, and dissuade persons and corporations from bringing or maintaining legal proceedings or claims that unfairly interfere with the right to public participation.

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## The Parliament of South Australia enacts as follows:

### 1—Short title

This Act may be cited as the *Protection of Public Participation Act 2006*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Purpose of Act

The purpose of this Act is to protect and encourage public participation, and dissuade persons from bringing or maintaining, or threatening to bring or maintain, proceedings or claims that are an interference with another's right to public participation—

- (a) by providing means by which a person may obtain a declaration from the Magistrates Court that a particular communication or conduct of the person constitutes public participation; and

- (b) by providing—
  - (i) an opportunity, at or before the trial of a proceeding, for the Supreme Court to consider whether the proceeding, or a claim within the proceeding, constitutes interference with the defendant's right to public participation; and
  - (ii) a means by which such a proceeding or claim may be summarily dismissed and the defendant reimbursed for reasonable costs and expenses incurred as a result; and
  - (iii) a means by which a person who has suffered unjustifiable interference with the person's right to public participation may be awarded punitive or exemplary damages.

#### **4—Interpretation**

In this Act, unless the contrary intention appears—

*court* means the Supreme Court;

*government* means local, state or federal government;

*government body* includes any government department, agency, employee, agent or other person with authority to act on behalf of a government body;

*public participation* means communication or conduct aimed, in whole or in part, at influencing public opinion, or promoting or furthering action by the public, a corporation or government body in relation to an issue of public interest, but does not include communication or conduct that -

- (a) contravenes an order of the court or is in contempt of court; or
- (b) constitutes vilification based on race, sex, sexuality, ethnicity, nationality or creed; or
- (c) causes or threatens to cause physical injury; or
- (d) causes or threatens to cause damage to property; or
- (e) trespasses upon a place of private residence; or
- (f) is within an industrial dispute between an employer, their employees or former employees, or
- (g) is by way of advertising for commercial goods or services; or
- (h) attempts to incite others to commit any of the conduct or communication referred to in paragraph (a) – (g) above.

#### **5—Right to public participation**

(1) A person has the right to public participation.

(2) However, it is not a defence to a charge of an offence against a person to claim that the person's communication or conduct the subject of the charge constituted public participation by the person.

## **6—Application for declaration that certain communications or conduct constitute public participation**

- (1) A person against whom legal proceedings have been, or may be, issued (the *applicant*) may apply to the Magistrates Court for a declaration that—
  - (a) the communication or conduct the subject of the proceedings constitutes public participation by the applicant; and
  - (b) the issuing of proceedings or the threat to issue proceedings by a person (the *respondent*) against the applicant in respect of the applicant's communication or conduct is inconsistent with the applicant's right under this Act to public participation.
- (2) An application under subsection (1)—
  - (a) must be served on the respondent; and
  - (b) must be heard by the Magistrates Court within 30 days of the date of service; and
  - (c) may be heard in the absence of the respondent.
- (3) The Court may not make a declaration under subsection (1) unless satisfied that the communication or conduct of the applicant was based on honest and reasonable belief on the part of the applicant and a person of similar disposition would believe that, at the time of the public participation, the communication or conduct was reasonable.
- (4) The Court may make such orders as it thinks fit (including an order as to costs) on an application under this section.

## **7—Summary dismissal of proceedings found to be an interference with right to public participation**

- (1) A defendant against whom a proceeding is brought or maintained who considers that the whole of the proceeding, or a claim within the proceeding, is inconsistent with the defendant's right to public participation under this Act may apply to the court for 1 or more of the following orders:
  - (a) an order to dismiss the proceeding or claim (as the case may be);
  - (b) an order for reasonable costs and expenses;
  - (c) an order for punitive or exemplary damages against the plaintiff.
- (2) An application under this section must be brought within 60 days of the service of the originating process on the defendant, and must be dealt with by the court as soon as reasonably practicable (and any further application, procedure or other step in the proceeding is, unless the court otherwise orders, suspended until the application has been heard and decided).

- (3) Nothing in this section prevents the court from granting an injunction pending a determination of the rights under this Act of the parties to a proceeding.
- (4) If the defendant satisfies the court, on the balance of probabilities, on an application under this section that, when viewed on an objective basis—
  - (a) the communication or conduct in respect of which the proceeding or claim was brought constitutes public participation; and
  - (b) the communication or conduct of the applicant was based on honest and reasonable belief on the part of the applicant and a person of similar disposition would believe that, at the time of the public participation, the communication or conduct was reasonable, the court may make 1 or more of the following orders:
    - (c) an order to dismiss the proceeding or claim (as the case may be);
    - (d) an order that the plaintiff pay all reasonable costs and expenses incurred by the defendant in relation to the proceeding or claim (as the case may be), including all reasonable costs and expenses incurred by the defendant in pursuing rights or remedies available under or contemplated by this Act in relation to the proceeding or claim;
    - (e) an order for punitive or exemplary damages against the plaintiff.
- (5) An order for punitive or exemplary damages may be made by the court on its own motion or on application by the defendant, but may only be made where the court is satisfied that a proceeding or claim (as the case may be) was brought or maintained for an improper purpose as defined by s(6).
- (6) A proceeding or claim is brought or maintained for an improper purpose if —
  - (a) the publication or conduct in relation to which the proceeding or claim is brought is public participation; and
  - (b) the plaintiff could have no reasonable expectation that the proceeding or claim would succeed; and
  - (c) a purpose for bringing or maintaining the proceeding is—
    - (i) to discourage the defendant or anyone else from engaging in public participation; or
    - (ii) to divert the defendant's resources from public participation to the proceeding; or
    - (iii) to penalise the defendant for engaging in public participation.