

Legislative Council—No 82

As introduced and read a first time, 6 December 2006

South Australia

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 that interfere with another's right to engage in 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

5 This Act will come into operation 6 months after the day on which it is assented to by the Governor.

3—Purpose of Act

The purpose of this Act is—

- (a) to protect and encourage public participation; and
- 10 (b) to dissuade persons from interfering with another person's right to engage in public participation by commencing or maintaining, or threatening to commence or maintain, legal proceedings against that other person.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

government means local, state or federal government;

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

improper purpose—see subsection (2);

20 **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—

- (a) that contravenes an order of a court or constitutes contempt of a court; or
- (b) that constitutes vilification based on race, sex, sexuality, ethnicity, nationality or creed; or
- 25 (c) that causes or threatens to cause physical injury or damage to property; or
- (d) that constitutes trespass; or
- (e) that incites, or attempts to incite, others to engage in communication or conduct that falls within any of the preceding paragraphs; or

- (f) in the course of an industrial dispute (within the meaning of the *Fair Work Act 1994*) by a party to the dispute; or
- (g) advertising goods or services for commercial purposes;

state includes a territory of the Commonwealth.

5 (2) For the purposes of this Act, legal proceedings will be taken to have been commenced or maintained against a defendant for an improper purpose if—

- (a) the defendant's communication or conduct the subject of the proceedings is public participation by the defendant; and
- (b) when viewed on an objective basis—

10 (i) there is no reasonable expectation that the proceedings will succeed; and

(ii) a purpose for commencing or maintaining the proceedings is—

(A) to discourage the defendant (or any other person) from engaging in public participation; or

15 (B) to divert the defendant's resources away from the defendant's engagement in public participation to the proceedings; or

(C) to otherwise punish the defendant for engaging in public participation.

20 **5—Right to engage in public participation**

- (1) A person has the right to engage in 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.

25 **6—Declaration that certain communications or conduct constitute public participation**

(1) If a person (**A**) threatens (expressly or impliedly) to commence legal proceedings against another person (**B**) in respect of a communication made by or conduct of B, B may apply to the Magistrates Court for a declaration that—

30 (a) the communication or conduct that would be the subject of the proceedings constitutes public participation by B; and

(b) commencing proceedings against B would be inconsistent with B's right under this Act to engage in public participation.

(2) An application under subsection (1)—

35 (a) must be served on A; 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 A.

- (3) The Court may only make a declaration under subsection (1) if satisfied that—
- (a) B's communication or conduct was based on B's honest and reasonable belief; and
 - (b) a person of similar disposition to B would believe the communication or conduct was reasonable; and
 - (c) the issuing of proceedings against B would be inconsistent with B's right under this Act to engage in public participation.
- (4) The Court may make such orders as it thinks fit (including an order as to costs) on an application under this section.

7—Dismissal of certain proceedings

- (1) A person against whom legal proceedings are commenced (the *defendant*) who considers that the proceedings (in whole or in part) are inconsistent with the defendant's right to engage in public participation under this Act may apply to the Supreme Court for either or both of the following orders:
- (a) an order dismissing the proceedings (in whole or in part);
 - (b) an order for costs in relation to the proceedings (including costs incurred in pursuing rights or remedies available under or contemplated by this Act).
- (2) An application under this section—
- (a) must be served on the plaintiff in the proceedings; and
 - (b) must be dealt with by the Court as soon as reasonably practicable.
- (3) Subject to any contrary order by the Court, any further application, procedure or other step in the proceedings is suspended until determination of the application under this section.
- (4) The Court may make an order under this section if satisfied that—
- (a) when viewed on an objective basis, the defendant's communication or conduct that is the subject of the proceedings constitutes public participation by the defendant; and
 - (b) the defendant's communication or conduct was based on the defendant's honest and reasonable belief; and
 - (c) a person of similar disposition to the defendant would believe the defendant's communication or conduct was reasonable.
- (5) The Court may, on application by the defendant or on its own motion, in addition to the orders referred to in subsection (1), make an order for punitive or exemplary damages if satisfied that the proceedings (or part of the proceedings) were commenced against the defendant for an improper purpose.