

South Australia



RACIAL VILIFICATION ACT 1996

No. 92 of 1996

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Interpretation
4. Racial vilification
5. DPP's consent required for prosecution
6. Damages
7. Amendment of the Wrongs Act 1936
 - Racial victimisation*
 - 37. Racial victimisation



ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 92 of 1996

An Act to prohibit certain conduct involving vilification of people on the ground of race; to amend the Wrongs Act 1936 to provide redress for the victims of racial vilification.

[Assented to 12 December 1996]

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Racial Vilification Act 1996*.

Commencement

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

Interpretation

3. In this Act—

"DPP" means the Director of Public Prosecutions;

"public act" means—

- (a) any form of communication with the public; or
- (b) conduct in a public place;

"race" of a person means the nationality, country of origin, colour or ethnic origin of the person or of another person with whom the person resides or associates;

"threat" includes—

- (a) conduct in which a threat is implicit;
- (b) a conditional threat.

Racial vilification

4. A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of their race by—

- (a) threatening physical harm to the person, or members of the group, or to property of the person or members of the group; or
- (b) inciting others to threaten physical harm to the person, or members of the group, or to property of the person or members of the group.

Maximum penalty—

If the offender is a body corporate—\$25 000.

If the offender is a natural person—\$5 000, or imprisonment for 3 years, or both.

DPP's consent required for prosecution

5. A prosecution for an offence against this Act cannot be commenced without the DPP's written consent.

Damages

6. (1) A court by which a person is convicted of an offence against this Act may award damages (including punitive damages) against the defendant.

(2) Damages may be awarded under subsection (1)—

- (a) if the offence was directed at a specific person—in favour of that person; or
- (b) if the offence was directed at the members of a particular racial group—in favour of an organisation formed to further the interests of the relevant group.

(3) The total amount of the damages that may be awarded for the same act, or series of acts, cannot exceed \$40 000.

(4) In applying the limit fixed by subsection (3), the court must take into account damages awarded in civil proceedings for the tort of racial victimisation¹ in respect of the same act or series of acts.

¹ See section 37 of the *Wrongs Act 1936*.

(5) Before a court awards damages under this section, the court must—

- (a) take reasonable steps to ensure that all persons who may have been harmed by the defendant's conduct are given a reasonable opportunity to claim damages in the proceedings; or
- (b) take other action that appears reasonable and necessary in the circumstances to protect the interests of possible claimants who are not before the court.

Amendment of the Wrongs Act 1936

7. The *Wrongs Act 1936* is amended by inserting the following heading and section after section 36:

*Racial victimisation***Racial victimisation**

37. (1) In this section—

"act of racial victimisation" means a public act inciting hatred, serious contempt or severe ridicule of a person or group of persons on the ground of their race but does not include—

- (a) publication of a fair report of the act of another person; or
- (b) publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a reasonable act, done in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest (including reasonable public discussion, debate or expositions);

"detriment" means—

- (a) injury, damage or loss; or
- (b) distress in the nature of intimidation, harassment or humiliation;

"public act" means—

- (a) any form of communication with the public; or
- (b) conduct in a public place;

"race" of a person means the nationality, country of origin, colour or ethnic origin of the person or of another person with whom the person resides or associates.

(2) An act of racial victimisation that results in detriment is actionable as a tort by the person who suffers the detriment.

(3) In an action for damages for racial victimisation, damages may be awarded to compensate any form of detriment.

(4) The total amount of the damages that may be awarded for the same act or series of acts cannot exceed \$40 000.

(5) In applying the limit fixed by subsection (4), the court must take into account damages awarded by a court in criminal proceedings on convicting the defendant, in respect of the same act or series of acts, of the offence or a series of offences of racial vilification².

² See section 6 of the *Racial Vilification Act 1996*.

(6) Before a court awards damages for an act of racial victimisation, the court must—

- (a) take reasonable steps to ensure that all persons who may have been harmed by the act are given a reasonable opportunity to claim damages in the proceedings; or
- (b) take other action that appears reasonable and necessary in the circumstances to protect the interests of possible claimants who are not before the court.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor