



New South Wales

Defamation Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

In November 2004, the Attorneys General of the States and Territories agreed to support the enactment in their respective jurisdictions of uniform model provisions in relation to the law of defamation (the *model provisions*).

At the time of the agreement, each State and Territory had different laws governing the tort of defamation. Tasmania and Queensland codified their civil law of defamation. The other jurisdictions retained the common law, but supplemented or altered it to varying degrees by enacting differing statutory provisions. The States and Territories also had different laws governing the offence of criminal defamation.

In New South Wales, the civil law of defamation is predominantly governed by the common law as modified and supplemented by the *Defamation Act 1974* of New South Wales. The law of criminal defamation is partly codified by Part 5 of that Act.

The Summary of existing defamation laws at the end of this Explanatory note summarises the position in each jurisdiction in relation to the tort of defamation and criminal defamation.

The object of this Bill is to enact the model provisions agreed to by the Attorneys General of the States and Territories. The principal features of the model provisions are:

- (a) the retention (with some modifications) of the common law of defamation to determine civil liability for defamation, and
- (b) the abolition of the distinction at common law between slander and libel, and
- (c) the creation of a statutory cap on the amount of damages for non-economic loss that may be awarded in civil proceedings for defamation, and
- (d) the enactment of provisions to facilitate the resolution of civil disputes about the publication of defamatory matter without litigation, and
- (e) the delineation of the respective roles of juries and judicial officers in the jury trial of civil proceedings for defamation by limiting the role of juries to the determination of whether a person has been defamed and leaving the award of damages to judicial officers, and
- (f) the abolition of exemplary and punitive damages in civil proceedings for defamation, and
- (g) the establishment of truth alone as a defence to a civil action for defamation, and
- (h) the imposition of a limitation period for civil actions for defamation of 1 year, subject to an extension (in limited circumstances) to a period of up to 3 years following publication.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act commences on 1 January 2006.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain terms used in the proposed Act. In particular, the following terms are defined:

The *general law* is defined to mean the common law and equity.

The term *matter* is defined to include:

- (a) an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical, and
- (b) a program, report, advertisement or other thing communicated by means of television, radio, the Internet or any other form of electronic communication, and
- (c) a letter, note or other writing, and
- (d) a picture, gesture or oral utterance, and

- (e) any other thing by means of which something may be communicated to a person.

Clause 5 provides that the proposed Act binds the Crown in all its capacities.

Part 2 General principles

Division 1 Defamation and the general law

Clause 6 provides that the proposed Act does not affect the operation of the general law in relation to the tort of defamation except to the extent that the proposed Act provides otherwise (whether expressly or by necessary implication). The proposed section also makes it clear that the general law as it is from time to time is to apply for the purposes of the new legislation as if existing defamation legislation had never been enacted or made. This provision removes any doubt about the application of the general law particularly in those Australian jurisdictions in which the general law has previously been displaced by a codified law of defamation.

The proposed Act does not seek to define the circumstances in which a person has a cause of action for defamation. Rather, the proposed Act operates by reference to the elements of the tort of defamation at general law. Accordingly, if a plaintiff does not have a cause of action for defamation at general law in relation to the publication of matter by the defendant, the plaintiff will not (subject to the modification of the general law effected by proposed section 7) have a cause of action for the purposes of the proposed Act.

At general law, a plaintiff has a cause of action for defamation against a defendant if the defendant publishes defamatory accusations or charges (referred to conventionally as *imputations*) about the plaintiff to at least one other person (other than the defendant or his or her spouse). The courts have formulated the test for determining what is defamatory in various ways. Examples of these formulations include (but are not limited to) the following:

- (a) “[Words that] tend to lower the plaintiff in the estimation of right-thinking members of society generally”. See *Sim v Stretch* [1936] 2 All ER 1237 at 1240 per Lord Atkin.
- (b) “Whether the alleged libel is established depends upon the understanding of the hypothetical referees who are taken to have a uniform view of the meaning of the language used, and upon the standards, moral or social, by which they evaluate the imputation they understand to have been made. They are taken to share a moral or social standard by which to judge the defamatory character of that imputation”. See *Reader’s Digest Services Pty Ltd v Lamb* (1982) 150 CLR 500 at 506 per Brennan J.
- (c) “In order that one person may establish against another a civil cause of action [for defamation], it is essential that he should prove (1) that a statement or other representation has been made ... of a kind likely to lead ordinary decent folk to think the less of the person about whom it is made; (2) that it was about him that it was made; and (3) that the other has published it to at least one third

party (who is not the husband or wife of the other)". See *Consolidated Trust Co Ltd v Browne* (1948) 49 SR (NSW) 86 at 88 per Jordan CJ.

- (d) "At common law, in general, an imputation, to be defamatory of the plaintiff, must be disparaging of him ... I say that this is 'in general' the position, as the common law also recognizes as defamatory an imputation which, although not disparaging, tends to make other persons 'shun or avoid' the plaintiff ... as well as an imputation that displays the plaintiff in a ridiculous light, notwithstanding the absence of any moral blame on his part". See *Boyd v Mirror Newspapers Ltd* [1980] 2 NSWLR 449 at 452–453 per Hunt J.

Clause 7 abolishes the general law distinction between libel and slander.

At general law, libel is the publication of defamatory matter in a written or other permanent form while slander is the publication of defamatory matter in a form that is temporary and merely audible. If a matter is libellous, the plaintiff does not need to prove that he or she sustained material loss (or *special damage*) in order for the matter to be actionable. However, if a matter is slanderous, the plaintiff must usually prove special damage in order for the matter to be actionable.

The abolition of this general law distinction means that all publications of defamatory matter are actionable without proof of special damage.

The distinction has already been abolished in most Australian jurisdictions under existing law. The only exceptions are South Australia, Victoria and Western Australia.

Division 2 Causes of action for defamation

Clause 8 provides that a person has a single cause of action for defamation in relation to the publication of defamatory matter even if more than one defamatory imputation about the person is carried by the matter.

The proposed section reflects the position at general law that the publication of defamatory matter is the foundation of a civil action for defamation and reflects the existing law in all of the States and Territories other than New South Wales. Under the existing law of New South Wales, each defamatory imputation carried by a matter founds a separate cause of action.

Clause 9 provides that generally a corporation does not have a cause of action for defamation of the corporation.

However, a corporation will still have a cause of action for defamation if, at the time of the publication of the defamatory matter:

- (a) the objects for which the corporation was formed did not include obtaining financial gain for its members or corporators, or
- (b) the corporation employed fewer than 10 persons and was not related to another corporation,

and the corporation was not a public body.

The proposed section will not preclude any individual associated with a corporation from suing for defamation in relation to the publication of matter about the individual that also defames the corporation.

New South Wales is currently the only jurisdiction to have precluded most (but not all) corporations from suing for defamation under its existing law.

Clause 10 provides that no civil action for defamation may be asserted, continued or enforced by a person in relation to the publication of defamatory matter about a deceased person (whether or not published before or after the person's death). The proposed section also prevents the assertion, continuation or enforcement of a civil cause of action for defamation against a publisher of defamatory matter who is deceased.

With the exception of Tasmania, the existing laws of the States and Territories preclude a civil action for defamation in relation to a deceased person or against a deceased person. The existing law reflects the position at general law.

Division 3 Choice of law

Clause 11 provides for choice of law rules where a civil cause of action is brought in a court of this State in relation to the publication of defamatory matter that occurred wholly or partly in an Australian jurisdictional area. An ***Australian jurisdictional area*** is defined to mean:

- (a) the geographical area of Australia that lies within the territorial limits of a particular State (including its coastal waters), but not including any territory, place or other area referred to in paragraph (c), or
- (b) the geographical area of Australia that lies within the territorial limits of a particular Territory (including its coastal waters), but not including any territory, place or other area referred to in paragraph (c), or
- (c) any territory, place or other geographical area of Australia over which the Commonwealth has legislative competence but over which no State or Territory has legislative competence.

Examples of areas over which the Commonwealth, but not a State or Territory, has legislative competence include places in relation to which the Commonwealth has exclusive power to make laws under section 52 (i) of the Commonwealth Constitution and the external Territories of the Commonwealth.

The proposed section creates 2 choice of law rules.

The first choice of law rule applies where a matter is published wholly within a single Australian jurisdictional area. The choice of law rule in that case will require a court of this State to apply the substantive law applicable in the Australian jurisdictional area in which the matter was published.

The second choice of law rule applies if the same, or substantially the same, matter is published in more than one Australian jurisdictional area by a particular person to 2 or more persons. The choice of law rule in that case will require a court of this State to apply the substantive law applicable in the Australian jurisdictional area with

which the harm occasioned by the publication as a whole has its closest connection. In determining which area has the closest connection with the harm, the court may take into account any matter it considers relevant, including:

- (a) the place at the time of publication where the plaintiff was ordinarily resident or, in the case of a corporation that may assert a cause of action for defamation, the place where the corporation had its principal place of business at that time, and
- (b) the extent of publication in each relevant Australian jurisdictional area, and
- (c) the extent of harm sustained by the plaintiff in each relevant Australian jurisdictional area.

The second choice of law rule is based on the recommendation made by the Australian Law Reform Commission in its report entitled *Unfair Publication: Defamation and Privacy* (1979, Report No 11) at pages 190–191. See also Samuels JA in *ABC v Waterhouse* (1991) 25 NSWLR 519 at 536–537. As indicated in that report, the Australian jurisdictional area with which the tort will have its closest connection will generally be where the plaintiff is resident if the plaintiff is a natural person resident in Australia. In the case of a corporation, it will generally be where the corporation has its principal place of business.

In the event that each State and Territory enacts the model provisions, there is still scope for the application of these choice of law rules if a provision other than the enacted model provisions limits or excludes civil liability for defamation in a particular jurisdiction. For instance, a common statutory provision in State and Territory law is one that protects a public official or public authority of the State or Territory from civil liability for actions taken in a good faith in the exercise of statutory functions. These provisions are of general application and therefore include, but are not limited to, civil liability for defamation.

The choice of law rules enacted by the proposed section apply only the substantive law of the jurisdiction concerned. In *John Pfeiffer Pty Limited v Rogerson* (2000) 203 CLR 503 at 544–545, the High Court held that rules which are directed to governing or regulating the mode or conduct of court proceedings are procedural and all other provisions or rules are to be classified as substantive. For instance, a law relating to whether proceedings should be tried by jury would be procedural because the law relates to regulating the mode or conduct of court proceedings.

Under existing law, choice of law for defamation matters is largely determined by the general law. Under the general law, the law of the place in which a defamatory matter is published must be applied to determine liability for that publication. If the matter is published in more than one place, then there is a separate cause of action for each publication. In that circumstance, different laws may need to be applied for each different publication depending on the place of publication.

Part 3 Resolution of civil disputes without litigation

Division 1 Offers to make amends

The Division sets out provisions dealing with offers to make amends for the publication of matter that is, or may be, defamatory. The provisions may be used before, or as an alternative to, litigation.

New South Wales and the Australian Capital Territory make similar provision for offers to make amends under their existing laws. The other Australian jurisdictions have provisions in their rules of court and other civil procedure legislation that provide for the making of offers of compromise or payments into court. However, these provisions tend to be available only once litigation has commenced.

Clause 12 provides that the Division applies if a person (the ***publisher***) publishes matter (the ***matter in question***) that is, or may be, defamatory of another person (the ***aggrieved person***). The proposed section also makes it clear that the Division may be used instead of the provisions of any rules of court or any other law in relation to payment into court or offers of compromise. The Division will also not prevent the making or acceptance of settlement offers.

Clause 13 enables a publisher to make an offer to make amends to an aggrieved person.

Clause 14 provides that the offer cannot be made if 28 days have elapsed since the publisher has been given a concerns notice by the aggrieved person that the matter in question is or may be defamatory or if a defence in an action for defamation brought by the aggrieved person has been served. The proposed section also enables a publisher to seek further particulars from the aggrieved person if the concerns notice does not particularise the defamatory imputations carried by the matter in question of which the aggrieved person complains.

Clause 15 specifies what an offer to make amends must or may contain. It also confers certain powers on a court in relation to the enforcement of an offer to make amends that is accepted by an aggrieved person.

Clause 16 enables a publisher to withdraw an offer to make amends. It also enables a publisher to make a renewed offer to make amends after the expiry of the periods referred to in proposed section 14 if the renewed offer is a genuine attempt by the publisher to address matters of concern raised by the aggrieved person about an earlier offer and is made within 14 days after the earlier offer is withdrawn (or within an agreed period).

Clause 17 provides that if the publisher carries out the terms of an accepted offer to make amends (including paying any compensation under the offer), the aggrieved person cannot assert, continue or enforce an action for defamation against the publisher in relation to the matter in question even if the offer was limited to any particular defamatory imputations.

Clause 18 provides that it is a defence to an action for defamation against the publisher if the publisher made an offer of amends that was not accepted and the offer was made as soon as practicable after the publisher became aware that the matter in

question is or may be defamatory, the publisher was ready and willing to carry out the terms of the offer and the offer was reasonable in the circumstances.

Clause 19 provides that (subject to some exceptions) evidence of any statement or admission made in connection with the making or acceptance of an offer to make amends is not admissible as evidence in any criminal or civil proceedings.

Division 2 Apologies

Clause 20 provides that an apology by or on behalf of a person will not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with any defamatory matter published by the person.

A number of States and Territories make provision along these lines under their existing laws.

Part 4 Litigation of civil disputes

Division 1 General

Clause 21 enables a plaintiff or defendant in defamation proceedings to elect to have the proceedings determined by a jury unless the court orders otherwise. The grounds on which a court may order otherwise include (but are not limited to):

- (a) the trial requires a prolonged examination of records, or
- (b) the trial involves any technical, scientific or other issue that cannot be conveniently considered and resolved by a jury.

There is a miscellany of different provisions under the existing laws of the States and Territories about the use of juries in defamation proceedings. The proposed section, along with proposed section 22, seeks to enact uniform provisions in relation to the use of juries for those States and Territories that will continue to use juries in defamation proceedings.

Clause 22 specifies the respective roles of juries and judicial officers where defamation proceedings are tried by jury.

The proposed section provides that the jury is to determine whether the defendant has published defamatory matter and, if so, whether any defence raised by the defendant has been established. However, the judicial officer and not the jury is to determine the amount of damages (if any) that should be awarded in successful proceedings.

The proposed section alters the position at general law by withdrawing from the jury the determination of damages. Under the existing law of New South Wales, juries cannot determine defences or damages. However, the proposed section makes it clear that it does not require or permit a jury to determine any issue that, at general law, is an issue to be determined by the judicial officer. For example, at general law the judicial officer and not the jury determines whether a matter has been published on an occasion of absolute or qualified privilege for the purposes of a defence. See *Guise v Kouvelis* (1947) 74 CLR 102 at 109, 113 and 117 and *Rajski v Carson* (1988) 15 NSWLR 84 at 100–101.

Clause 23 provides that the leave of the court is required for further proceedings for defamation to be brought against the same person even if the earlier proceedings were brought outside of this State.

New South Wales makes similar provision under its existing law.

Division 2 Defences

Clause 24 provides that a defence under Division 2 is additional to any other defence or exclusion of liability available to the defendant apart from the proposed Act (including under the general law) and does not of itself vitiate, limit or abrogate any other defence or exclusion of liability. The proposed section also provides that the general law applies to determine whether a publication of defamatory matter was actuated by malice. At general law, a publication of matter is actuated by malice if it is published for a purpose or with a motive that is foreign to the occasion that gives rise to the defence at issue. See *Robert v Bass* (2002) 212 CLR 1 at 30–33.

Clause 25 provides that it is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true. The term ***substantially true*** is defined in proposed section 4 to mean true in substance or not materially different from the truth.

The defence reflects the defence of justification at general law where truth alone is a defence to the publication of defamatory matter.

Under existing law, some States and Territories require a defendant to prove more than truth in order to raise the defence of justification. In New South Wales, the defendant must prove both that the matter was true and that it was in the public interest for it to be published. In Queensland, Tasmania and the Australian Capital Territory, the defendant must prove that the publication of the matter was for the public benefit. However, in Victoria, South Australia, Western Australia and the Northern Territory a defendant needs only to prove that the matter was true.

Clause 26 provides for a defence of contextual truth. The defence deals with the case where there are a number of defamatory imputations carried by a matter but the plaintiff has chosen to proceed with one or more but not all of them. In that circumstance, the defendant may have a defence of contextual truth if the defendant proves:

- (a) the matter carried, in addition to the defamatory imputations of which the plaintiff complains, one or more other imputations (***contextual imputations***) that are substantially true, and
- (b) the defamatory imputations do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.

There is a defence of contextual truth under the existing law of New South Wales.

At general law, the truth of each defamatory imputation carried by the matter published that is pleaded by the plaintiff must be proved to make out the defence of justification unless it can be established that the imputations were not separate and distinct but, as a whole, carried a “common sting”. In that case, the defence of

justification is made out if the defendant can show that the “common sting” is true. See *Polly Peck (Holdings) Plc v Trelfold* [1986] QB 1000 at 1032. The defence of contextual truth created by the proposed Act, unlike the general law, will apply even if the contextual imputations are separate and distinct from the defamatory imputations of which the plaintiff complains.

Clause 27 provides that it is a defence to the publication of defamatory matter if the defendant proves that the matter was published on an occasion of absolute privilege. The proposed section lists, on a non-exhaustive basis, certain publications of matter that are published on occasions of absolute privilege. The publications of matter listed include:

- (a) the publication of matter in the course of the proceedings of a parliamentary body of any country, and
- (b) the publication of matter in the course of the proceedings of an Australian court or Australian tribunal, and
- (c) the publication of matter on an occasion that, if published in another Australian jurisdiction, would be an occasion of absolute privilege in that jurisdiction under a provision of a law of the jurisdiction corresponding to the proposed section, and
- (d) the publication of matter by persons or bodies in any circumstances specified in Schedule 1 (Additional publications to which absolute privilege applies).

The defence of absolute privilege at general law extends to certain parliamentary and judicial proceedings and certain ministerial communications. The privilege is described as being absolute because it cannot be defeated even if the matter was untrue or was published maliciously.

The proposed section extends the defence of absolute privilege to the publication of matter that would be subject to absolute privilege under the corresponding law of another Australian jurisdiction. This provision ensures that if a State or Territory includes a publication in its equivalent of Schedule 1, then that publication will also have the benefit of absolute privilege in all other States and Territories that enact the model provisions.

Clause 28 provides that it is a defence to the publication of defamatory matter if the defendant proves that the matter was contained in:

- (a) a public document or a fair copy of a public document, or
- (b) a fair summary of, or a fair extract from, a public document.

The proposed section provides that the defence is defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.

The proposed section defines **public document** to mean:

- (a) any report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published by or under the authority of the body or any law, or

- (b) any judgment, order or other determination of a court or arbitral tribunal of any country in civil proceedings, including:
 - (i) any record of the court or tribunal relating to the judgment, order or determination or to its enforcement or satisfaction, and
 - (ii) any report of the court or tribunal about its judgment, order or determination and the reasons for its judgment, order or determination, or
- (c) any report or other document that under the law of any country:
 - (i) is authorised to be published, or
 - (ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body, or
- (d) any document issued by the government (including a local government) of a country, or by an officer, employee or agency of the government, for the information of the public, or
- (e) any record or document open to inspection by the public that is kept:
 - (i) by an Australian jurisdiction, or
 - (ii) by a statutory authority of an Australian jurisdiction, or
 - (iii) by an Australian court, or
 - (iv) under legislation of an Australian jurisdiction, or
- (f) any other document issued, kept or published by a person, body or organisation of another Australian jurisdiction that is treated in that jurisdiction as a public document under a provision of a law of the jurisdiction corresponding to the proposed section, or
- (g) any document of a kind specified in Schedule 2 (Additional kinds of public documents).

The existing laws of a number of States and Territories make provision for a statutory defence along these lines. However, the scope of the statutory defences differs in each jurisdiction.

The proposed section includes a comprehensive list of public documents within its ambit. The provision also ensures that if a State or Territory includes a class of document in its equivalent of Schedule 2, then those documents will also have the benefit of this defence in all other States and Territories that enact the model provisions.

Clause 29 provides that it is a defence to the publication of defamatory matter if the defendant proves that the matter was, or was contained in, a fair report of any proceedings of public concern. The proposed section also provides that it is a defence to the publication of defamatory matter if the defendant proves that:

- (a) the matter was, or was contained in, an earlier published report of proceedings of public concern, and

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- (b) the matter was, or was contained in, a fair copy of, a fair summary of, or a fair extract from, the earlier published report, and
 - (c) the defendant had no knowledge that would reasonably make the defendant aware that the earlier published report was not fair.

The proposed section provides that the defence is defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.

The proposed section defines *proceedings of public concern* to mean:

- (a) any proceedings in public of a parliamentary body, or
- (b) any proceedings in public of an international organisation of any countries or of the governments of any countries, or
- (c) any proceedings in public of an international conference at which the governments of any countries are represented, or
- (d) any proceedings in public of:
 - (i) the International Court of Justice, or any other judicial or arbitral tribunal, for the decision of any matter in dispute between nations, or
 - (ii) any other international judicial or arbitral tribunal, or
- (e) any proceedings in public of a court or arbitral tribunal of any country, or
- (f) any proceedings in public of an inquiry held under the law of any country or under the authority of the government of any country, or
- (g) any proceedings in public of a local government body of any Australian jurisdiction, or
- (h) certain proceedings of a learned society or of a committee or governing body of such a society, or
- (i) certain proceedings of a sport or recreation association or of a committee or governing body of such an association, or
- (j) certain proceedings of a trade association or of a committee or governing body of such an association, or
- (k) any proceedings of a public meeting (with or without restriction on the people attending) of shareholders of a public company under the *Corporations Act 2001* of the Commonwealth held anywhere in Australia, or
- (l) any proceedings of a public meeting (with or without restriction on the people attending) held anywhere in Australia if the proceedings relate to a matter of public interest, including the advocacy or candidature of a person for public office, or
- (m) any proceedings of an ombudsman of any country if the proceedings relate to a report of the ombudsman, or
- (n) any proceedings in public of a law reform body of any country, or

- (o) any other proceedings conducted by, or proceedings of, a person, body or organisation of another Australian jurisdiction that are treated in that jurisdiction as proceedings of public concern under a provision of a law of the jurisdiction corresponding to the proposed section, or
- (p) any proceedings of a kind specified in Schedule 3 (Additional proceedings of public concern).

At general law, fair and accurate reports of proceedings of certain persons and bodies are subject to qualified privilege. For example, the general law defence extends to proceedings in parliament and judicial proceedings conducted in open court. As the defence at common law is a defence of qualified privilege, it can be defeated by proof that the publication of the defamatory matter was actuated by malice.

The existing laws of most States and Territories make provision for a statutory defence along the lines of the general law defence. However, the scope of the statutory defences differs in each jurisdiction.

The proposed section extends to a larger class of proceedings than the general law defence. The provision ensures that if a State or Territory includes a class of proceedings in its equivalent of Schedule 3, then those proceedings will also have the benefit of this defence in all other States and Territories that enact the model provisions. Also, the new defence limits the circumstances in which the defence can be defeated to situations where the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.

Clause 30 provides for a defence of qualified privilege that is based on the provisions of section 22 of the *Defamation Act 1974* of New South Wales. The proposed section provides that it is a defence to the publication of defamatory matter to a person (the **recipient**) if the defendant proves that:

- (a) the recipient has an interest or apparent interest in having information on some subject, and
- (b) the matter is published to the recipient in the course of giving to the recipient information on that subject, and
- (c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.

The proposed section lists a number of factors that the court may take into account in determining whether the conduct of the defendant was reasonable. These factors largely mirror the factors relevant at general law as stated by the House of Lords in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127. (In this regard, it should be noted that the New South Wales Court of Appeal in *John Fairfax & Sons Ltd v Vilo* (2001) 52 NSWLR 373 refused to follow the more liberal view of the general law taken by the House of Lords).

As the defence created by the proposed section is a defence of qualified privilege, it can be defeated on the same grounds as the defence of qualified privilege at general law. For example, the proposed section makes it clear that the defence may be defeated if the plaintiff proves that the publication was actuated by malice.

The defence is broader than the defence at general law because the interest that the recipient must have or apparently have is not as limited as at general law. It has been said of the New South Wales provision that “[w]hat the section does is to substitute reasonableness in the circumstances for the duty or interest which the common law principles of privilege require to be established”. See *Morosi v Mirror Newspapers Ltd* [1977] 2 NSWLR 749 at 797.

The proposed section, however, alters the factors referred to in the New South Wales provision in 2 important respects. Firstly, it requires the court to take into account whether it was in the public interest in the circumstances for the matter published to be published expeditiously. The New South Wales provision limits the court to a consideration of whether it was necessary in the circumstances for the matter published to be published expeditiously. Secondly, it requires a court to take into account the nature of the business environment in which the defendant operates. The New South Wales provision does not include this factor in its list of factors.

Clause 31 provides for a number of defences relating to the publication of matter that expresses an opinion that is honestly held by its maker rather than a statement of fact.

The proposed section distinguishes between 3 situations.

The first situation is where the opinion was that of the defendant. In that situation, the defence is made out if it is proved that the defendant held the opinion, the opinion related to a matter of public interest and the opinion was based on proper material. **Proper material**, for the purposes of the proposed section, is material that:

- (a) is substantially true, or
- (b) was published on an occasion of absolute or qualified privilege (whether under the proposed Act or at general law), or
- (c) was published on an occasion that attracted the protection of a defence under the proposed section or proposed section 28 or 29.

This defence will be defeated only if it is proved that the opinion was not honestly held by the defendant at the time the defamatory matter was published.

The second situation is where the opinion was that of the defendant’s employee or agent. In that situation, the defence is made out if it is proved that the employee or agent held the opinion, the opinion related to a matter of public interest and the opinion was based on proper material. This defence will be defeated only if it is proved that the defendant did not believe that the opinion was honestly held by the employee or agent at the time the defamatory matter was published.

The third situation is where the opinion was that of a third party. In that situation, the defence is made out if it is proved that the opinion was held by the third party at the time of publication, the opinion related to a matter of public interest and the opinion was based on proper material. This defence will be defeated only if it is proved that the defendant had reasonable grounds to believe that the opinion was not honestly held by the third party at the time the defamatory matter was published.

The defences, at least in relation to opinions personally held by the defendant, largely reflect the defence of fair comment at general law. However, the proposed section clarifies the position at general law in relation to the publication of the opinions of

employees, agents and third parties. The existing laws of New South Wales, Queensland, Tasmania, Western Australia and the Northern Territory make statutory provision (whether partly or wholly) in relation to the defence of fair comment.

Clause 32 provides that it is a defence to the publication of defamatory matter if the defendant proves that:

- (a) the defendant published the matter merely in the capacity, or as an employee or agent, of a subordinate distributor, and
- (b) the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory, and
- (c) the defendant's lack of knowledge was not due to any negligence on the part of the defendant.

A person will be a subordinate distributor of matter for the purposes of the proposed section if the person:

- (a) was not the first or primary distributor of the matter, and
- (b) was not the author or originator of the matter, and
- (c) did not have any capacity to exercise editorial control over the content of the matter (or over the publication of the matter) before it was first published.

The proposed section also lists a number of circumstances in which a person will generally not be treated as being the first or primary publisher of matter.

The defence largely follows the defence of innocent dissemination at general law. See, for example, *Thompson v Australian Capital Television Pty Ltd* (1996) 186 CLR 574. However, the provision seeks to make the position of providers of Internet and other electronic and communication services clearer than it is at general law. For example, the provider of an Internet email service will generally not be treated as being the first or primary distributor of defamatory matter contained in an email sent using the service. Accordingly, a service provider of that kind will be treated as being a subordinate distributor for the purposes of the defence unless it can be shown that the service provider was the author or originator of the matter or had the capacity to exercise editorial control over the matter.

Clause 33 provides that it is a defence to the publication of defamatory matter if the defendant proves that the circumstances of publication were such that the plaintiff was unlikely to sustain any harm.

The existing laws of the Australian Capital Territory, New South Wales, Queensland, Tasmania and Western Australia already provide for the defence.

Division 3 Remedies

Clause 34 provides that a court, in determining the amount of damages to be awarded in any defamation proceedings, is to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded.

Clause 35 provides for the determination of damages for non-economic loss for defamation. A limit on the amount of damages for non-economic loss is imposed (\$250,000). The proposed section also provides for the indexation, by order of the Minister published in the Gazette, of the maximum amount that may be awarded as damages for non-economic loss. A court will not be permitted to order a defendant to pay damages that exceed the maximum damages amount under the proposed section unless it is satisfied that the circumstances of the publication of the matter to which the proceedings relate are such as to warrant an award of aggravated damages.

The existing laws of the States and Territories do not currently impose a cap on damages for non-economic loss that may be awarded in defamation proceedings.

Clause 36 provides that a court, in awarding damages, is generally to disregard the malice or other state of mind of the defendant at the time the matter to which the proceedings relate was published.

Clause 37 provides that a court cannot award exemplary or punitive damages for defamation.

The award of these damages is permitted under the existing laws of all of the States and Territories other than New South Wales.

Clause 38 lists some factors that a court may take into account in mitigation of damages. The list is not intended to be exhaustive.

The existing laws of a number of States and Territories make provision for similar mitigating factors, although there are differences between the jurisdictions as to the factors expressly recognised by legislation.

Clause 39 enables a court in defamation proceedings that finds for a plaintiff on more than one cause of action to assess damages as a single sum.

The existing law of New South Wales already confers this power on its courts.

Division 4 Costs

Clause 40 requires a court (unless the interests of justice require otherwise) to order costs against an unsuccessful party to proceedings for defamation to be assessed on an indemnity basis if the court is satisfied that the party unreasonably failed to make or accept a settlement offer made by the other party to the proceedings. The proposed section also provides that in awarding costs in relation to proceedings for defamation, the court may have regard to:

- (a) the way in which the parties to the proceedings conducted their cases, and
- (b) any other matters that the court considers relevant.

The proposed section is based on the provisions of section 48A of the *Defamation Act 1974* of New South Wales.

Part 5 Miscellaneous

Clause 41 facilitates the proof in civil proceedings for defamation of publication in the context of mass produced copies of matter and periodicals.

Clause 42 facilitates the proof in civil proceedings for defamation of criminal convictions.

Clause 43 provides that a person in civil proceedings for defamation is not excused from answering a question, or discovering or producing a document or thing, on the ground that the answer may tend to incriminate the person of an offence of criminal defamation. However, the answer, document or thing is not admissible in evidence in proceedings for criminal defamation.

Clause 44 provides for how notices and other documents may be given or served under the proposed Act.

Clause 45 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 46 repeals the *Defamation Act 1974* of New South Wales.

Clause 47 gives effect to the savings and transitional provisions set out in Schedule 4.

Clause 48 gives effect to the amendments to certain Acts set out in Schedules 5 and 6.

Clause 49 provides for a review of the operation of the proposed Act to be undertaken after 5 years from the date of assent to the proposed Act.

Schedule 1 Additional publications to which absolute privilege applies

Schedule 1 lists publications of certain persons and bodies that are subject to absolute privilege for the purposes of proposed section 27 (Defence of absolute privilege). These publications are in addition to the publications specified in the proposed section.

The listed publications are drawn largely from the kinds of publications that currently attract the defence of absolute privilege under Division 3 (Absolute privilege) of Part 3 of the *Defamation Act 1974* of New South Wales. However, it should be noted that some of the listed publications may in any event already be partly covered by the terms of proposed section 27 (2) (a) and (b), which relate to certain publications of matter in the course of proceedings of parliamentary bodies, Australian courts and Australian tribunals. The listing of such publications in the Schedule is for abundant caution and is not intended to limit the generality of proposed section 27 (2) (a) or (b).

Schedule 2 Additional kinds of public documents

Schedule 2 lists kinds of documents that are to be treated as public documents for the purposes of the defence under proposed section 28 (Defence for publication of public documents). These kinds of documents are in addition to the documents specified in the proposed section.

The listed documents are drawn largely from the kinds of documents that currently attract the defence under section 25 (Copies etc of official and public documents and records) of the *Defamation Act 1974* of New South Wales. However, it should be noted that some of the listed documents may in any event already be partly covered by the terms of proposed section 28 (4) (a)–(f), which set out the kinds of documents to which the proposed section applies. The listing of such documents in the Schedule is for abundant caution and is not intended to limit the generality of proposed section 28 (4) (a)–(f).

Schedule 3 Additional proceedings of public concern

Schedule 3 lists kinds of proceedings that are to be treated as proceedings of public concern for the purposes of the defences under proposed section 29 (Defences of fair report of proceedings of public concern). These kinds of proceedings are in addition to the proceedings specified in the proposed section.

The listed proceedings are drawn largely from the kinds of proceedings that currently attract the defence under section 24 (Protected reports—Schedule 2) of the *Defamation Act 1974* of New South Wales. However, it should be noted that some of the listed proceedings may in any event already be partly covered by the terms of proposed section 29 (4) (a)–(o), which set out the kinds of proceedings to which the proposed section applies. The listing of such proceedings in the Schedule is for abundant caution and is not intended to limit the generality of proposed section 29 (4) (a)–(o).

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains provisions enabling the Governor to make regulations of a savings and transitional nature. It also provides that, generally, the proposed Act will apply to defamatory matter that is published after the commencement of the proposed Act. However, the existing law will continue to apply to:

- (a) a cause of action for defamation that accrued before the commencement of the proposed Act, and
- (b) a cause of action for defamation that accrued after the commencement of the proposed Act, but only if:
 - (i) the action is raised in proceedings that include other causes of action that accrued before that commencement, and
 - (ii) the action accrued no later than 12 months after the earliest pre-commencement action accrued, and
 - (iii) each action in the proceedings arose out of the publication of the same, or substantially the same, matter on different occasions.

Schedule 5 Amendment of Acts concerning criminal defamation and limitation periods

Criminal defamation

Schedule 5.1 [4] inserts a new section 529 in the *Crimes Act 1900* of New South Wales dealing with criminal defamation.

The proposed section makes it an offence for a person, without lawful excuse, to publish defamatory matter about another living person (the *victim*):

- (a) knowing the matter to be false, and
- (b) with intent to cause serious harm to the victim or any other person or being reckless as to whether such harm is caused.

A defendant will have a lawful excuse for the publication of the matter if, and only if, the defendant would, having regard only to the circumstances happening before or at the time of the publication, have had a defence for the publication if the victim had brought civil proceedings for defamation against the defendant.

The proposed section provides that the maximum penalty for the offence will be 3 years imprisonment. Accordingly, an offence under the proposed section will be an indictable offence. See sections 5 and 6 of the *Criminal Procedure Act 1986*.

In regard to penalties for the offence, the provisions of sections 15 and 16 of the *Crimes (Sentencing Procedure) Act 1999* should also be noted. Section 15 of that Act enables a court to impose a fine not exceeding 1,000 penalty units (currently, \$110,000) on an individual instead of or in addition to a term of imprisonment. Also, section 16 of that Act authorises a court to impose a fine on a body corporate not exceeding 2,000 penalty units (currently, \$220,000) instead of the term of imprisonment specified by the proposed section.

The proposed section also:

- (a) continues the abolition of the general law misdemeanour of criminal libel that was effected by section 49 of the *Defamation Act 1974* of New South Wales, and
- (b) provides that the continued abolition of the general law misdemeanour of criminal libel does not affect the law relating to blasphemous, seditious or obscene libel, and
- (c) provides that the commencement of criminal proceedings for an offence under the proposed section does not preclude the commencement of civil proceedings or the determination of those proceedings, and
- (d) enacts provisions that facilitate the proof in criminal proceedings for defamation of certain criminal convictions.

Schedule 5.1 [1]–[3] and [5] make amendments to Part 14A and section 579 of the *Crimes Act 1900* of New South Wales that are consequential on the enactment of the new section 529.

Statute of limitations

Schedule 5.2 amends the *Limitation Act 1969* of New South Wales to provide that, generally, a civil action for defamation must be commenced within 1 year following the date of publication of the matter of which the plaintiff complains. However, a court must extend this limitation period to a period of up to 3 years if satisfied that it was not reasonable in the circumstances for the plaintiff to have commenced the action within the 1 year period.

Under their existing laws, both New South Wales and the Australian Capital Territory provide for a 1 year limitation period that can be extended for a limited further period. In South Australia and Western Australia actions for slander are subject to a limitation period of 2 years. In other cases and in other jurisdictions, the limitation period is generally 6 years.

Schedule 6 Consequential amendment of other Acts

Schedule 6 makes amendments to certain Acts that are consequential on the enactment of the proposed Act.

Summary of existing defamation laws

Existing civil law of defamation of the States and Territories

Jurisdiction	Applicable civil law
Australian Capital Territory	The general law applies in the Australian Capital Territory subject principally to the provisions of the <i>Civil Law (Wrongs) Act 2002</i> of that Territory, particularly Chapter 9 of that Act.
New South Wales	The general law applies in New South Wales subject principally to the provisions of the <i>Defamation Act 1974</i> of that State.
Northern Territory	The general law applies in the Northern Territory subject principally to the provisions the <i>Defamation Act</i> of that Territory.
Queensland	The civil law of defamation in Queensland has been codified by the <i>Defamation Act 1889</i> of that State.
South Australia	The general law applies in South Australia subject principally to the provisions of the <i>Civil Liability Act 1936</i> of that State, particularly Part 2 of that Act.
Tasmania	The civil law of defamation in Tasmania has been codified by the <i>Defamation Act 1957</i> of that State.
Victoria	The general law applies in Victoria subject principally to the provisions of the <i>Wrongs Act 1958</i> of that State, particularly Part I of that Act.

Jurisdiction	Applicable civil law
Western Australia	<p>The general law applies in Western Australia subject principally to the provisions of the following Acts of or applying in that State:</p> <ul style="list-style-type: none"> (a) the <i>Libel Act 1843</i> of the United Kingdom, (b) the <i>Newspaper Libel and Registration Act 1884</i>, (c) the <i>Newspaper Libel and Registration Act 1884 Amendment Act 1888</i>, (d) <i>The Criminal Code</i> set out in the <i>Criminal Code Act 1913</i>, but only to the extent that the Code declares the publication of defamatory matter to be lawful. See section 5 of the <i>Criminal Code Act 1913</i>, Chapter XXXV of the Code and <i>West Australian Newspapers Ltd v Bridge</i> (1979) 141 CLR 535.

Existing criminal law of defamation of the States and Territories

Jurisdiction	Applicable criminal law
Australian Capital Territory	The law of criminal defamation in the Australian Capital Territory is contained in the <i>Defamation (Criminal Proceedings) Act 2001</i> of that Territory.
New South Wales	The law of criminal defamation in New South Wales is contained in the <i>Defamation Act 1974</i> of that State, particularly Part 5 of that Act.
Northern Territory	The law of criminal defamation in the Northern Territory is contained in the <i>Criminal Code</i> set out in the <i>Criminal Code Act</i> of that Territory, particularly Division 7 of Part VI of the Code.
Queensland	The law of criminal defamation in Queensland is contained in the <i>Defamation Act 1889</i> of that State, particularly sections 8 and 9 and Part 8 of that Act.
South Australia	The law of criminal defamation in South Australia is contained in section 257 of the <i>Criminal Law Consolidation Act 1935</i> of that State.
Tasmania	The law of criminal defamation in Tasmania is contained in the <i>Criminal Code</i> set out in the <i>Criminal Code Act 1924</i> of that State, particularly Chapter XXIII of the Code.
Victoria	The general law offence of criminal defamation applies in Victoria, subject to the maximum term of imprisonment specified for the offence by section 320 of the <i>Crimes Act 1958</i> of that State.

Defamation Bill 2005

Explanatory note

Jurisdiction	Applicable criminal law
Western Australia	The law of criminal defamation in Western Australia is contained in <i>The Criminal Code</i> set out in the <i>Criminal Code Act 1913</i> , particularly Chapter XXXV of that Code.



New South Wales

Defamation Bill 2005

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Defamation Bill 2005

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New South Wales

Defamation Bill 2005

No , 2005

A Bill for

An Act to enact in New South Wales provisions to promote uniform laws of defamation in Australia; to repeal the *Defamation Act 1974*; to amend the *Crimes Act 1900* in relation to criminal defamation; to amend the *Limitation Act 1969* in relation to the limitation period for defamation actions; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Defamation Act 2005*. 4

2 Commencement 5

This Act commences on 1 January 2006. 6

3 Objects of Act 7

The objects of this Act are: 8

- (a) to enact provisions to promote uniform laws of defamation in 9
Australia, and 10
- (b) to ensure that the law of defamation does not place unreasonable 11
limits on freedom of expression and, in particular, on the 12
publication and discussion of matters of public interest and 13
importance, and 14
- (c) to provide effective and fair remedies for persons whose 15
reputations are harmed by the publication of defamatory matter, 16
and 17
- (d) to promote speedy and non-litigious methods of resolving 18
disputes about the publication of defamatory matter. 19

4 Definitions 20

In this Act: 21

Australian court means any court established by or under a law of an 22
Australian jurisdiction (including a court conducting committal 23
proceedings for an indictable offence). 24

Australian jurisdiction means: 25

- (a) a State, or 26
- (b) a Territory, or 27
- (c) the Commonwealth. 28

Australian tribunal means any tribunal (other than a court) established 29
by or under a law of an Australian jurisdiction that has the power to take 30
evidence from witnesses before it on oath or affirmation (including a 31
Royal Commission or other special commission of inquiry). 32

country includes: 33

- (a) a federation and a state, territory, province or other part of a 34
federation, and 35

(b) an Australian jurisdiction.	1
document means any record of information, and includes:	2
(a) anything on which there is writing, and	3
(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, and	4 5 6
(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, and	7 8
(d) a map, plan, drawing or photograph.	9
electronic communication includes a communication of information in the form of data, text, images or sound (or any combination of these) by means of guided or unguided electromagnetic energy, or both.	10 11 12
general law means the common law and equity.	13
matter includes:	14
(a) an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical, and	15 16
(b) a program, report, advertisement or other thing communicated by means of television, radio, the Internet or any other form of electronic communication, and	17 18 19
(c) a letter, note or other writing, and	20
(d) a picture, gesture or oral utterance, and	21
(e) any other thing by means of which something may be communicated to a person.	22 23
offer to make amends means an offer to make amends under Division 1 of Part 3.	24 25
parliamentary body means:	26
(a) a parliament or legislature of any country, or	27
(b) a house of a parliament or legislature of any country, or	28
(c) a committee of a parliament or legislature of any country, or	29
(d) a committee of a house or houses of a parliament or legislature of any country.	30 31
substantially true means true in substance or not materially different from the truth.	32 33
Territory means the Australian Capital Territory or the Northern Territory.	34 35
this jurisdiction means New South Wales.	36

Clause 5 Defamation Bill 2005

Part 1 Preliminary

5 Act to bind Crown

This Act binds the Crown in right of this jurisdiction and, in so far as the
legislative power of the Parliament of this jurisdiction permits, the
Crown in all its other capacities.

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Part 2	General principles	1
Division 1	Defamation and the general law	2
6	Tort of defamation	3
(1)	This Act relates to the tort of defamation at general law.	4
(2)	This Act does not affect the operation of the general law in relation to the tort of defamation except to the extent that this Act provides otherwise (whether expressly or by necessary implication).	5 6 7
(3)	Without limiting subsection (2), the general law as it is from time to time applies for the purposes of this Act as if the following legislation had never been enacted:	8 9 10
(a)	the <i>Defamation Act 1958</i> ,	11
(b)	the <i>Defamation Act 1974</i> .	12
7	Distinction between slander and libel abolished	13
(1)	The distinction at general law between slander and libel is abolished.	14
(2)	Accordingly, the publication of defamatory matter of any kind is actionable without proof of special damage.	15 16
Division 2	Causes of action for defamation	17
8	Single cause of action for multiple defamatory imputations in same matter	18 19
	A person has a single cause of action for defamation in relation to the publication of defamatory matter about the person even if more than one defamatory imputation about the person is carried by the matter.	20 21 22
9	Certain corporations do not have cause of action for defamation	23
(1)	A corporation has no cause of action for defamation in relation to the publication of defamatory matter about the corporation unless it was an excluded corporation at the time of the publication.	24 25 26
(2)	A corporation is an excluded corporation if:	27
(a)	the objects for which it is formed do not include obtaining financial gain for its members or corporators, or	28 29
(b)	it employs fewer than 10 persons and is not related to another corporation,	30 31
	and the corporation is not a public body.	32

(3)	In counting employees for the purposes of subsection (2) (b), part-time employees are to be taken into account as an appropriate fraction of a full-time equivalent.	1 2 3
(4)	In determining whether a corporation is related to another corporation for the purposes of subsection (2) (b), section 50 of the <i>Corporations Act 2001</i> of the Commonwealth applies as if references to bodies corporate in that section were references to corporations within the meaning of this section.	4 5 6 7 8
(5)	Subsection (1) does not affect any cause of action for defamation that an individual associated with a corporation has in relation to the publication of defamatory matter about the individual even if the publication of the same matter also defames the corporation.	9 10 11 12
(6)	In this section: <i>corporation</i> includes any body corporate or corporation constituted by or under a law of any country (including by exercise of a prerogative right), whether or not a public body. <i>public body</i> means a local government body or other governmental or public authority constituted by or under a law of any country.	13 14 15 16 17 18
10	No cause of action for defamation of, or against, deceased persons	19
	A person (including a personal representative of a deceased person) cannot assert, continue or enforce a cause of action for defamation in relation to:	20 21 22
	(a) the publication of defamatory matter about a deceased person (whether published before or after his or her death), or	23 24
	(b) the publication of defamatory matter by a person who has died since publishing the matter.	25 26
Division 3	Choice of law	27
11	Choice of law for defamation proceedings	28
(1)	If a matter is published wholly within a particular Australian jurisdictional area, the substantive law that is applicable in that area must be applied in this jurisdiction to determine any cause of action for defamation based on the publication.	29 30 31 32
(2)	If there is a multiple publication of matter in more than one Australian jurisdictional area, the substantive law applicable in the Australian jurisdictional area with which the harm occasioned by the publication as a whole has its closest connection must be applied in this jurisdiction to determine each cause of action for defamation based on the publication.	33 34 35 36 37 38

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- (3) In determining the Australian jurisdictional area with which the harm occasioned by a publication of matter has its closest connection, a court may take into account:
- (a) the place at the time of publication where the plaintiff was ordinarily resident or, in the case of a corporation that may assert a cause of action for defamation, the place where the corporation had its principal place of business at that time, and
 - (b) the extent of publication in each relevant Australian jurisdictional area, and
 - (c) the extent of harm sustained by the plaintiff in each relevant Australian jurisdictional area, and
 - (d) any other matter that the court considers relevant.
- (4) For the purposes of this section, the *substantive law* applicable in an Australian jurisdictional area does not include any law prescribing rules for choice of law that differ from the rules prescribed by this section.
- (5) In this section:
- Australian jurisdictional area*** means:
- (a) the geographical area of Australia that lies within the territorial limits of a particular State (including its coastal waters), but not including any territory, place or other area referred to in paragraph (c), or
 - (b) the geographical area of Australia that lies within the territorial limits of a particular Territory (including its coastal waters), but not including any territory, place or other area referred to in paragraph (c), or
 - (c) any territory, place or other geographical area of Australia over which the Commonwealth has legislative competence but over which no State or Territory has legislative competence.
- geographical area of Australia*** includes:
- (a) the territorial sea of Australia, and
 - (b) the external Territories of the Commonwealth.
- multiple publication*** means publication by a particular person of the same, or substantially the same, matter in substantially the same form to 2 or more persons.

Part 3	Resolution of civil disputes without litigation	1
Division 1	Offers to make amends	2
12	Application of Division	3
(1)	This Division applies if a person (the <i>publisher</i>) publishes matter (the <i>matter in question</i>) that is, or may be, defamatory of another person (the <i>aggrieved person</i>).	4 5 6
(2)	The provisions of this Division may be used instead of the provisions of any rules of court or any other law in relation to payment into court or offers of compromise.	7 8 9
(3)	Nothing in this Division prevents a publisher or aggrieved person from making or accepting a settlement offer in relation to the publication of the matter in question otherwise than in accordance with the provisions of this Division.	10 11 12 13
13	Publisher may make offer to make amends	14
(1)	The publisher may make an offer to make amends to the aggrieved person.	15 16
(2)	The offer may be:	17
(a)	in relation to the matter in question generally, or	18
(b)	limited to any particular defamatory imputations that the publisher accepts that the matter in question carries.	19 20
(3)	If 2 or more persons published the matter in question, an offer to make amends by one or more of them does not affect the liability of the other or others.	21 22 23
(4)	An offer to make amends is taken to have been made without prejudice, unless the offer provides otherwise.	24 25
14	When offer to make amends may be made	26
(1)	An offer to make amends cannot be made if:	27
(a)	28 days have elapsed since the publisher was given a concerns notice by the aggrieved person, or	28 29
(b)	a defence has been served in an action brought by the aggrieved person against the publisher in relation to the matter in question.	30 31
(2)	A notice is a <i>concerns notice</i> for the purposes of this section if the notice:	32 33
(a)	is in writing, and	34

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| <p>(b) informs the publisher of the defamatory imputations that the aggrieved person considers are or may be carried about the aggrieved person by the matter in question (the <i>imputations of concern</i>).</p> <p>(3) If an aggrieved person gives the publisher a concerns notice, but fails to particularise the imputations of concern adequately, the publisher may give the aggrieved person a written notice (a <i>further particulars notice</i>) requesting the aggrieved person to provide reasonable further particulars about the imputations of concern as specified in the further particulars notice.</p> <p>(4) An aggrieved person to whom a further particulars notice is given must provide the reasonable further particulars specified in the notice within 14 days (or any further period agreed by the publisher and aggrieved person) after being given the notice.</p> <p>(5) An aggrieved person who fails to provide the reasonable further particulars specified in a further particulars notice within the applicable period is taken not to have given the publisher a concerns notice for the purposes of this section.</p> <p>15 Content of offer to make amends</p> <p>(1) An offer to make amends:</p> <p style="padding-left: 20px;">(a) must be in writing, and</p> <p style="padding-left: 20px;">(b) must be readily identifiable as an offer to make amends under this Division, and</p> <p style="padding-left: 20px;">(c) if the offer is limited to any particular defamatory imputations—must state that the offer is so limited and particularise the imputations to which the offer is limited, and</p> <p style="padding-left: 20px;">(d) must include an offer to publish, or join in publishing, a reasonable correction of the matter in question or, if the offer is limited to any particular defamatory imputations, the imputations to which the offer is limited, and</p> <p style="padding-left: 20px;">(e) if material containing the matter has been given to someone else by the publisher or with the publisher's knowledge—must include an offer to take, or join in taking, reasonable steps to tell the other person that the matter is or may be defamatory of the aggrieved person, and</p> <p style="padding-left: 20px;">(f) must include an offer to pay the expenses reasonably incurred by the aggrieved person before the offer was made and the expenses reasonably incurred by the aggrieved person in considering the offer, and</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> |
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(g)	may include any other kind of offer, or particulars of any other action taken by the publisher, to redress the harm sustained by the aggrieved person because of the matter in question, including (but not limited to):	1 2 3 4
(i)	an offer to publish, or join in publishing, an apology in relation to the matter in question or, if the offer is limited to any particular defamatory imputations, the imputations to which the offer is limited, or	5 6 7 8
(ii)	an offer to pay compensation for any economic or non-economic loss of the aggrieved person, or	9 10
(iii)	the particulars of any correction or apology made, or action taken, before the date of the offer.	11 12
(2)	Without limiting subsection (1) (g) (ii), an offer to pay compensation may comprise or include any one or more of the following:	13 14
(a)	an offer to pay a stated amount,	15
(b)	an offer to pay an amount to be agreed between the publisher and the aggrieved person,	16 17
(c)	an offer to pay an amount determined by an arbitrator appointed, or agreed on, by the publisher and the aggrieved person,	18 19
(d)	an offer to pay an amount determined by a court.	20
(3)	If an offer to make amends is accepted, a court may, on the application of the aggrieved person or publisher, determine:	21 22
(a)	if the offer provides for a court to determine the amount of compensation payable under the offer—the amount of compensation to be paid under the offer, and	23 24 25
(b)	any other question that arises about what must be done to carry out the terms of the offer.	26 27
(4)	The powers conferred on a court by subsection (3) are exercisable:	28
(a)	if the aggrieved person has brought proceedings against the publisher in any court for defamation in relation to the matter in question, by that court in those proceedings, and	29 30 31
(b)	except as provided in paragraph (a), by the Supreme Court.	32
16	Withdrawal of offer to make amends	33
(1)	An offer to make amends may be withdrawn before it is accepted by notice in writing given to the aggrieved person.	34 35
(2)	A publisher who has withdrawn an offer to make amends may make a renewed offer.	36 37

(3)	A renewed offer may (but need not) be in the same terms as the withdrawn offer.	1 2
(4)	A renewed offer is to be treated as a new offer (including for the purposes of section 14).	3 4
(5)	However, the time limit specified in section 14 for the making of offers to make amends does not prevent the making of a renewed offer that is not in the same terms as the withdrawn offer if:	5 6 7
(a)	the renewed offer represents a genuine attempt by the publisher to address matters of concern raised by the aggrieved person about the withdrawn offer, and	8 9 10
(b)	the renewed offer is made within 14 days after the withdrawal of the withdrawn offer or any other period agreed by the publisher and the aggrieved person.	11 12 13
17	Effect of acceptance of offer to make amends	14
(1)	If the publisher carries out the terms of an offer to make amends (including payment of any compensation under the offer) that is accepted, the aggrieved person cannot assert, continue or enforce an action for defamation against the publisher in relation to the matter in question even if the offer was limited to any particular defamatory imputations.	15 16 17 18 19 20
(2)	A court may (but need not):	21
(a)	order the publisher to pay the aggrieved person the expenses reasonably incurred by the aggrieved person as a result of accepting the offer, and	22 23 24
(b)	order any costs incurred by the aggrieved person that form part of those expenses to be assessed on an indemnity basis.	25 26
(3)	The powers conferred on a court by subsection (2) are exercisable:	27
(a)	if the aggrieved person has brought proceedings against the publisher in any court for defamation in relation to the matter in question, by that court in those proceedings, and	28 29 30
(b)	except as provided in paragraph (a), by the Supreme Court.	31
18	Effect of failure to accept reasonable offer to make amends	32
(1)	If an offer to make amends is made in relation to the matter in question but is not accepted, it is a defence to an action for defamation against the publisher in relation to the matter if:	33 34 35
(a)	the publisher made the offer as soon as practicable after becoming aware that the matter is or may be defamatory, and	36 37

(b)	at any time before the trial the publisher was ready and willing, on acceptance of the offer by the aggrieved person, to carry out the terms of the offer, and	1 2 3
(c)	in all the circumstances the offer was reasonable.	4
(2)	In determining whether an offer to make amends is reasonable, a court:	5
(a)	must have regard to any correction or apology published before any trial arising out of the matter in question, including the extent to which the correction or apology is brought to the attention of the audience of the matter in question taking into account:	6 7 8 9
(i)	the prominence given to the correction or apology as published in comparison to the prominence given to the matter in question as published, and	10 11 12
(ii)	the period that elapses between publication of the matter in question and publication of the correction or apology, and	13 14
(b)	may have regard to:	15
(i)	whether the aggrieved person refused to accept an offer that was limited to any particular defamatory imputations because the aggrieved person did not agree with the publisher about the imputations that the matter in question carried, and	16 17 18 19 20
(ii)	any other matter that the court considers relevant.	21
19	Inadmissibility of evidence of certain statements and admissions	22
(1)	Evidence of any statement or admission made in connection with the making or acceptance of an offer to make amends is not admissible as evidence in any legal proceedings (whether criminal or civil).	23 24 25
(2)	Subsection (1) does not prevent the admission of evidence in any legal proceedings in order to determine:	26 27
(a)	any issue arising under, or relating to the application of, a provision of this Division, or	28 29
(b)	costs in defamation proceedings.	30
Division 2	Apologies	31
20	Effect of apology on liability for defamation	32
(1)	An apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person:	33 34
(a)	does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and	35 36

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| (b) | is not relevant to the determination of fault or liability in connection with that matter. | 1 |
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| (2) | Evidence of an apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter. | 3 |
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| (3) | Nothing in this section limits the operation of section 38. | 7 |

Part 4 Litigation of civil disputes

Division 1 General

21 Election for defamation proceedings to be tried by jury

- (1) Unless the court orders otherwise, a plaintiff or defendant in defamation proceedings may elect for the proceedings to be tried by jury.
- (2) An election must be:
 - (a) made at the time and in the manner prescribed by the rules of court for the court in which the proceedings are to be tried, and
 - (b) accompanied by the fee (if any) prescribed by the regulations made under the *Civil Procedure Act 2005* for the requisition of a jury in that court.
- (3) Without limiting subsection (1), a court may order that defamation proceedings are not to be tried by jury if:
 - (a) the trial requires a prolonged examination of records, or
 - (b) the trial involves any technical, scientific or other issue that cannot be conveniently considered and resolved by a jury.

22 Roles of judicial officers and juries in defamation proceedings

- (1) This section applies to defamation proceedings that are tried by jury.
- (2) The jury is to determine whether the defendant has published defamatory matter about the plaintiff and, if so, whether any defence raised by the defendant has been established.
- (3) If the jury finds that the defendant has published defamatory matter about the plaintiff and that no defence has been established, the judicial officer and not the jury is to determine the amount of damages (if any) that should be awarded to the plaintiff and all unresolved issues of fact and law relating to the determination of that amount.
- (4) If the proceedings relate to more than one cause of action for defamation, the jury must give a single verdict in relation to all causes of action on which the plaintiff relies unless the judicial officer orders otherwise.
- (5) Nothing in this section:
 - (a) affects any law or practice relating to special verdicts, or
 - (b) requires or permits a jury to determine any issue that, at general law, is an issue to be determined by the judicial officer.

23	Leave required for further proceedings in relation to publication of same defamatory matter	1
		2
	If a person has brought defamation proceedings for damages (whether in this jurisdiction or elsewhere) against any person in relation to the publication of any matter, the person cannot bring further defamation proceedings for damages against the same defendant in relation to the same or any other publication of the same or like matter, except with the leave of the court in which the further proceedings are to be brought.	3
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Division 2	Defences	9
24	Scope of defences under general law and other law not limited	10
(1)	A defence under this Division is additional to any other defence or exclusion of liability available to the defendant apart from this Act (including under the general law) and does not of itself vitiate, limit or abrogate any other defence or exclusion or liability.	11
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(2)	If a defence under this Division to the publication of defamatory matter may be defeated by proof that the publication was actuated by malice, the general law applies in defamation proceedings in which the defence is raised to determine whether a particular publication of matter was actuated by malice.	15
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25	Defence of justification	20
	It is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true.	21
		22
		23
26	Defence of contextual truth	24
	It is a defence to the publication of defamatory matter if the defendant proves that:	25
		26
(a)	the matter carried, in addition to the defamatory imputations of which the plaintiff complains, one or more other imputations (<i>contextual imputations</i>) that are substantially true, and	27
		28
		29
(b)	the defamatory imputations do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.	30
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27	Defence of absolute privilege	33
(1)	It is a defence to the publication of defamatory matter if the defendant proves that it was published on an occasion of absolute privilege.	34
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(2)	Without limiting subsection (1), matter is published on an occasion of absolute privilege if:	1
		2
(a)	the matter is published in the course of the proceedings of a parliamentary body, including (but not limited to):	3
		4
(i)	the publication of a document by order, or under the authority, of the body, and	5
		6
(ii)	the publication of the debates and proceedings of the body by or under the authority of the body or any law, and	7
		8
(iii)	the publication of matter while giving evidence before the body, and	9
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(iv)	the publication of matter while presenting or submitting a document to the body, or	11
		12
(b)	the matter is published in the course of the proceedings of an Australian court or Australian tribunal, including (but not limited to):	13
		14
		15
(i)	the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal (including any originating process), and	16
		17
		18
(ii)	the publication of matter while giving evidence before the court or tribunal, and	19
		20
(iii)	the publication of matter in any judgment, order or other determination of the court or tribunal, or	21
		22
(c)	the matter is published on an occasion that, if published in another Australian jurisdiction, would be an occasion of absolute privilege in that jurisdiction under a provision of a law of the jurisdiction corresponding to this section, or	23
		24
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(d)	the matter is published by a person or body in any circumstances specified in Schedule 1.	27
		28
28	Defence for publication of public documents	29
(1)	It is a defence to the publication of defamatory matter if the defendant proves that the matter was contained in:	30
		31
(a)	a public document or a fair copy of a public document, or	32
(b)	a fair summary of, or a fair extract from, a public document.	33
(2)	For the purposes of subsection (1), if a report or other document under the law of a country would be a public document except for non-compliance with a provision of that law about:	34
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(a)	the formal requirements for the content or layout of the report or document, or	37
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| <p>(b) the time within which the report or document is prepared, or presented, submitted, tabled or laid to or before a person or body, the report or document is a public document despite that non-compliance.</p> <p>(3) A defence established under subsection (1) is defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.</p> <p>(4) In this section, public document means:</p> <p>(a) any report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published by or under the authority of the body or any law, or</p> <p>(b) any judgment, order or other determination of a court or arbitral tribunal of any country in civil proceedings and including:</p> <p style="padding-left: 20px;">(i) any record of the court or tribunal relating to the judgment, order or determination or to its enforcement or satisfaction, and</p> <p style="padding-left: 20px;">(ii) any report of the court or tribunal about its judgment, order or determination and the reasons for its judgment, order or determination, or</p> <p>(c) any report or other document that under the law of any country:</p> <p style="padding-left: 20px;">(i) is authorised to be published, or</p> <p style="padding-left: 20px;">(ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body, or</p> <p>(d) any document issued by the government (including a local government) of a country, or by an officer, employee or agency of the government, for the information of the public, or</p> <p>(e) any record or other document open to inspection by the public that is kept:</p> <p style="padding-left: 20px;">(i) by an Australian jurisdiction, or</p> <p style="padding-left: 20px;">(ii) by a statutory authority of an Australian jurisdiction, or</p> <p style="padding-left: 20px;">(iii) by an Australian court, or</p> <p style="padding-left: 20px;">(iv) under legislation of an Australian jurisdiction, or</p> <p>(f) any other document issued, kept or published by a person, body or organisation of another Australian jurisdiction that is treated in that jurisdiction as a public document under a provision of a law of the jurisdiction corresponding to this section, or</p> <p>(g) any document of a kind specified in Schedule 2.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> |
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29	Defences of fair report of proceedings of public concern	1
(1)	It is a defence to the publication of defamatory matter if the defendant proves that the matter was, or was contained in, a fair report of any proceedings of public concern.	2 3 4
(2)	It is a defence to the publication of defamatory matter if the defendant proves that:	5 6
(a)	the matter was, or was contained in, an earlier published report of proceedings of public concern, and	7 8
(b)	the matter was, or was contained in, a fair copy of, a fair summary of, or a fair extract from, the earlier published report, and	9 10
(c)	the defendant had no knowledge that would reasonably make the defendant aware that the earlier published report was not fair.	11 12
(3)	A defence established under subsection (1) or (2) is defeated if, and only if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.	13 14 15 16
(4)	In this section, <i>proceedings of public concern</i> means:	17
(a)	any proceedings in public of a parliamentary body, or	18
(b)	any proceedings in public of an international organisation of any countries or of the governments of any countries, or	19 20
(c)	any proceedings in public of an international conference at which the governments of any countries are represented, or	21 22
(d)	any proceedings in public of:	23
(i)	the International Court of Justice, or any other judicial or arbitral tribunal, for the decision of any matter in dispute between nations, or	24 25 26
(ii)	any other international judicial or arbitral tribunal, or	27
(e)	any proceedings in public of a court or arbitral tribunal of any country, or	28 29
(f)	any proceedings in public of an inquiry held under the law of any country or under the authority of the government of any country, or	30 31 32
(g)	any proceedings in public of a local government body of any Australian jurisdiction, or	33 34
(h)	proceedings of a learned society, or of a committee or governing body of the society, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Australia about:	35 36 37 38
(i)	a member or members of the society, or	39

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| (ii) | a person subject by contract or otherwise by law to control by the society, or | 1
2 |
| (i) | proceedings of a sport or recreation association, or of a committee or governing body of the association, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Australia about: | 3
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| (i) | a member or members of the association, or | 7 |
| (ii) | a person subject by contract or otherwise by law to control by the association, or | 8
9 |
| (j) | proceedings of a trade association, or of a committee or governing body of the association, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Australia about: | 10
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13 |
| (i) | a member or members of the association, or | 14 |
| (ii) | a person subject by contract or otherwise by law to control by the association, or | 15
16 |
| (k) | any proceedings of a public meeting (with or without restriction on the people attending) of shareholders of a public company under the <i>Corporations Act 2001</i> of the Commonwealth held anywhere in Australia, or | 17
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| (l) | any proceedings of a public meeting (with or without restriction on the people attending) held anywhere in Australia if the proceedings relate to a matter of public interest, including the advocacy or candidature of a person for public office, or | 21
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| (m) | any proceedings of an ombudsman of any country if the proceedings relate to a report of the ombudsman, or | 25
26 |
| (n) | any proceedings in public of a law reform body of any country, or | 27 |
| (o) | any other proceedings conducted by, or proceedings of, a person, body or organisation of another Australian jurisdiction that are treated in that jurisdiction as proceedings of public concern under a provision of a law of the jurisdiction corresponding to this section, or | 28
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| (p) | any proceedings of a kind specified in Schedule 3. | 33 |
| (5) | In this section: | 34 |
| | law reform body of a country means a body (however described and whether or not permanent or full-time) established by law to conduct inquiries into, and to make recommendations on, reforming the laws of that country. | 35
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<i>learned society</i> means a body, wherever formed:	1
(a) the objects of which include the advancement of any art, science or religion or the advancement of learning in any field, and	2
	3
(b) authorised by its constitution:	4
(i) to exercise control over, or adjudicate on, matters connected with those objects, and	5
	6
(ii) to make findings or decisions having effect, by law or custom, in any part of Australia.	7
	8
<i>ombudsman</i> of a country means a person (however described and whether or not permanent or full-time) authorised by law to investigate complaints about the actions or other conduct of any public officials or public bodies of that country.	9
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<i>relevant objects</i> of a learned society, sport or recreation association or trade association means:	13
	14
(a) in relation to a learned society—objects of the kind referred to in paragraph (a) of the definition of <i>learned society</i> in this subsection, or	15
	16
	17
(b) in relation to a sport or recreation association—objects of the kind referred to in paragraph (a) of the definition of <i>sport or recreation association</i> in this subsection, or	18
	19
	20
(c) in relation to a trade association—objects of the kind referred to in paragraph (a) of the definition of <i>trade association</i> in this subsection.	21
	22
	23
<i>sport or recreation association</i> means a body, wherever formed:	24
(a) the objects of which include the promotion of any game, sport, or pastime to the playing of which or exercise of which the public is admitted as spectators or otherwise and the promotion or protection of the interests of people connected with the game, sport, or pastime, and	25
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(b) authorised by its constitution:	30
(i) to exercise control over, or adjudicate on, matters connected with the game, sport, or pastime, and	31
	32
(ii) to make findings or decisions having effect, by law or custom, in any part of Australia.	33
	34
<i>trade association</i> means a body, wherever formed:	35
(a) the objects of which include the promotion of any calling, that is to say, a trade, business, industry or profession and the promotion or protection of the interests of people engaged in any calling, and	36
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- (b) authorised by its constitution:
 - (i) to exercise control over, or adjudicate on, matters connected with a calling or the conduct of people engaged in the calling, and
 - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

30 Defence of qualified privilege for provision of certain information

- (1) There is a defence of qualified privilege for the publication of defamatory matter to a person (the *recipient*) if the defendant proves that:
 - (a) the recipient has an interest or apparent interest in having information on some subject, and
 - (b) the matter is published to the recipient in the course of giving to the recipient information on that subject, and
 - (c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.
- (2) For the purposes of subsection (1), a recipient has an apparent interest in having information on some subject if, and only if, at the time of the publication in question, the defendant believes on reasonable grounds that the recipient has that interest.
- (3) In determining for the purposes of subsection (1) whether the conduct of the defendant in publishing matter about a person is reasonable in the circumstances, a court may take into account:
 - (a) the extent to which the matter published is of public interest, and
 - (b) the extent to which the matter published relates to the performance of the public functions or activities of the person, and
 - (c) the seriousness of any defamatory imputation carried by the matter published, and
 - (d) the extent to which the matter published distinguishes between suspicions, allegations and proven facts, and
 - (e) whether it was in the public interest in the circumstances for the matter published to be published expeditiously, and
 - (f) the nature of the business environment in which the defendant operates, and
 - (g) the sources of the information in the matter published and the integrity of those sources, and
 - (h) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable

attempt was made by the defendant to obtain and publish a response from the person, and	1
(i) any other steps taken to verify the information in the matter published, and	2
(j) any other circumstances that the court considers relevant.	3
(4) For the avoidance of doubt, a defence of qualified privilege under subsection (1) is defeated if the plaintiff proves that the publication of the defamatory matter was actuated by malice.	4
(5) However, a defence of qualified privilege under subsection (1) is not defeated merely because the defamatory matter was published for reward.	5
31 Defences of honest opinion	6
(1) It is a defence to the publication of defamatory matter if the defendant proves that:	7
(a) the matter was an expression of opinion of the defendant rather than a statement of fact, and	8
(b) the opinion related to a matter of public interest, and	9
(c) the opinion is based on proper material.	10
(2) It is a defence to the publication of defamatory matter if the defendant proves that:	11
(a) the matter was an expression of opinion of an employee or agent of the defendant rather than a statement of fact, and	12
(b) the opinion related to a matter of public interest, and	13
(c) the opinion is based on proper material.	14
(3) It is a defence to the publication of defamatory matter if the defendant proves that:	15
(a) the matter was an expression of opinion of a person (the <i>commentator</i>), other than the defendant or an employee or agent of the defendant, rather than a statement of fact, and	16
(b) the opinion related to a matter of public interest, and	17
(c) the opinion is based on proper material.	18
(4) A defence established under this section is defeated if, and only if, the plaintiff proves that:	19
(a) in the case of a defence under subsection (1)—the opinion was not honestly held by the defendant at the time the defamatory matter was published, or	20

(b)	in the case of a defence under subsection (2)—the defendant did not believe that the opinion was honestly held by the employee or agent at the time the defamatory matter was published, or	1 2 3
(c)	in the case of a defence under subsection (3)—the defendant had reasonable grounds to believe that the opinion was not honestly held by the commentator at the time the defamatory matter was published.	4 5 6 7
(5)	For the purposes of this section, an opinion is based on <i>proper material</i> if it is based on material that:	8 9
(a)	is substantially true, or	10
(b)	was published on an occasion of absolute or qualified privilege (whether under this Act or at general law), or	11 12
(c)	was published on an occasion that attracted the protection of a defence under this section or section 28 or 29.	13 14
(6)	An opinion does not cease to be based on proper material only because some of the material on which it is based is not proper material if the opinion might reasonably be based on such of the material as is proper material.	15 16 17 18
32	Defence of innocent dissemination	19
(1)	It is a defence to the publication of defamatory matter if the defendant proves that:	20 21
(a)	the defendant published the matter merely in the capacity, or as an employee or agent, of a subordinate distributor, and	22 23
(b)	the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory, and	24 25
(c)	the defendant's lack of knowledge was not due to any negligence on the part of the defendant.	26 27
(2)	For the purposes of subsection (1), a person is a <i>subordinate distributor</i> of defamatory matter if the person:	28 29
(a)	was not the first or primary distributor of the matter, and	30
(b)	was not the author or originator of the matter, and	31
(c)	did not have any capacity to exercise editorial control over the content of the matter (or over the publication of the matter) before it was first published.	32 33 34
(3)	Without limiting subsection (2) (a), a person is not the first or primary distributor of matter merely because the person was involved in the publication of the matter in the capacity of:	35 36 37
(a)	a bookseller, newsagent or news-vendor, or	38

(b)	a librarian, or	1
(c)	a wholesaler or retailer of the matter, or	2
(d)	a provider of postal or similar services by means of which the matter is published, or	3 4
(e)	a broadcaster of a live programme (whether on television, radio or otherwise) containing the matter in circumstances in which the broadcaster has no effective control over the person who makes the statements that comprise the matter, or	5 6 7 8
(f)	a provider of services consisting of:	9
(i)	the processing, copying, distributing or selling of any electronic medium in or on which the matter is recorded, or	10 11
(ii)	the operation of, or the provision of any equipment, system or service, by means of which the matter is retrieved, copied, distributed or made available in electronic form, or	12 13 14
(g)	an operator of, or a provider of access to, a communications system by means of which the matter is transmitted, or made available, by another person over whom the operator has no effective control, or	15 16 17 18
(h)	a person who, on the instructions or at the direction of another person, prints or produces, reprints or reproduces or distributes the matter for or on behalf of that other person.	19 20 21
33	Defence of triviality	22
	It is a defence to the publication of defamatory matter if the defendant proves that the circumstances of publication were such that the plaintiff was unlikely to sustain any harm.	23 24 25
Division 3	Remedies	26
34	Damages to bear rational relationship to harm	27
	In determining the amount of damages to be awarded in any defamation proceedings, the court is to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded.	28 29 30 31
35	Damages for non-economic loss limited	32
(1)	Unless the court orders otherwise under subsection (2), the maximum amount of damages for non-economic loss that may be awarded in defamation proceedings is \$250,000 or any other amount adjusted in accordance with this section from time to time (the <i>maximum damages amount</i>) that is applicable at the time damages are awarded.	33 34 35 36 37

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- (2) A court may order a defendant in defamation proceedings to pay damages for non-economic loss that exceed the maximum damages amount applicable at the time the order is made if, and only if, the court is satisfied that the circumstances of the publication of the defamatory matter to which the proceedings relate are such as to warrant an award of aggravated damages. 1
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- (3) The Minister is, on or before 1 July 2006 and on or before 1 July in each succeeding year, to declare, by order published in the Gazette, the amount that is to apply, as from the date specified in the order, for the purposes of subsection (1). 7
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- (4) The amount declared is to be the amount applicable under subsection (1) (or that amount as last adjusted under this section) adjusted by the percentage change in the amount estimated by the Australian Statistician of the average weekly total earnings of full-time adults in Australia over the 4 quarters preceding the date of the declaration for which those estimates are, at that date, available. 11
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- (5) An amount declared for the time being under this section applies to the exclusion of the amount of \$250,000 or an amount previously adjusted under this section. 17
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- (6) If the Australian Statistician fails or ceases to estimate the amount referred to in subsection (4), the amount declared is to be determined in accordance with the regulations. 20
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- (7) In adjusting an amount to be declared for the purposes of subsection (1), the amount determined in accordance with subsection (4) is to be rounded to the nearest \$500. 23
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- (8) A declaration made or published in the Gazette after 1 July in a year and specifying a date that is before the date it is made or published as the date from which the amount declared by the order is to apply has effect as from that specified date. 26
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- 36 State of mind of defendant generally not relevant to awarding damages** 30
- In awarding damages for defamation, the court is to disregard the malice or other state of mind of the defendant at the time of the publication of the defamatory matter to which the proceedings relate or at any other time except to the extent that the malice or other state of mind affects the harm sustained by the plaintiff. 31
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- 37 Exemplary or punitive damages cannot be awarded** 36
- A plaintiff cannot be awarded exemplary or punitive damages for defamation. 37
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38	Factors in mitigation of damages	1
(1)	Evidence is admissible on behalf of the defendant, in mitigation of damages for the publication of defamatory matter, that:	2
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(a)	the defendant has made an apology to the plaintiff about the publication of the defamatory matter, or	4
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(b)	the defendant has published a correction of the defamatory matter, or	6
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(c)	the plaintiff has already recovered damages for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter, or	8
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(d)	the plaintiff has brought proceedings for damages for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter, or	11
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(e)	the plaintiff has received or agreed to receive compensation for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter.	14
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(2)	Nothing in subsection (1) operates to limit the matters that can be taken into account by a court in mitigation of damages.	17
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39	Damages for multiple causes of action may be assessed as single sum	19
	If the court in defamation proceedings finds for the plaintiff as to more than one cause of action, the judicial officer may assess damages in a single sum.	20
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Division 4	Costs	23
40	Costs in defamation proceedings	24
(1)	In awarding costs in defamation proceedings, the court may have regard to:	25
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(a)	the way in which the parties to the proceedings conducted their cases (including any misuse of a party's superior financial position to hinder the early resolution of the proceedings), and	27
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(b)	any other matters that the court considers relevant.	30
(2)	Without limiting subsection (1), a court must (unless the interests of justice require otherwise):	31
		32
(a)	if defamation proceedings are successfully brought by a plaintiff and costs in the proceedings are to be awarded to the plaintiff—	33
	order costs of and incidental to the proceedings to be assessed on an indemnity basis if the court is satisfied that the defendant unreasonably failed to make a settlement offer or agree to a settlement offer proposed by the plaintiff, or	34
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- (b) if defamation proceedings are unsuccessfully brought by a plaintiff and costs in the proceedings are to be awarded to the defendant—order costs of and incidental to the proceedings to be assessed on an indemnity basis if the court is satisfied that the plaintiff unreasonably failed to accept a settlement offer made by the defendant. 1
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- (3) In this section: 7
settlement offer means any offer to settle the proceedings made before 8
the proceedings are determined, and includes an offer to make amends 9
(whether made before or after the proceedings are commenced), that 10
was a reasonable offer at the time it was made. 11

Part 5 Miscellaneous

41 Proof of publication

- (1) If a document appears to be printed or otherwise produced by means adapted for the production of numerous copies and there is in the document a statement to the effect that the document is printed, produced, published or distributed by or for a particular person, the statement is evidence in defamation proceedings that the document was so printed, produced, published or distributed.
- (2) Evidence that a number or part of a document appearing to be a periodical is printed, produced, published or distributed by or for a particular person is evidence in defamation proceedings that a document appearing to be another number or part of the periodical was so printed, produced, published or distributed.
- (3) In this section:
periodical includes any newspaper, review, magazine or other printed document of which numbers or parts are published periodically.

42 Proof of convictions for offences

- (1) If the question whether or not a person committed an offence is in question in defamation proceedings:
 - (a) proof that the person was convicted of the offence by an Australian court is conclusive evidence that the person committed the offence, and
 - (b) proof that the person was convicted of the offence by a court of any country (other than an Australian court) or a court martial of any country is evidence that the person committed the offence.
- (2) For the purposes of this section, the contents of a document that is evidence of conviction of an offence, and the contents of an information, complaint, indictment, charge sheet or similar document on which a person is convicted of an offence, are admissible in evidence to identify the facts on which the conviction is based.
- (3) Subsection (2) does not affect the admissibility of other evidence to identify the facts on which the conviction is based.
- (4) In this section, *conviction* for an offence includes a finding of guilt but does not include:
 - (a) a conviction that has been set aside or quashed, or
 - (b) a conviction for an offence for which a person has received a pardon.

43	Incriminating answers, documents or things	1
(1)	A person who is required to answer a question, or to discover or produce a document or thing, in defamation proceedings is not excused from answering the question or discovering or producing the document or thing on the ground that the answer to the question or the discovery or production of the document or thing might tend to incriminate the person of an offence of criminal defamation.	2 3 4 5 6 7
(2)	However, any answer given to a question, or document or thing discovered or produced, by a natural person in compliance with the requirement is not admissible in evidence against the person in proceedings for criminal defamation.	8 9 10 11
44	Giving of notices and other documents	12
(1)	For the purposes of this Act, a notice or other document may be given to a person (or a notice or other document may be served on a person):	13 14
(a)	in the case of a natural person:	15
(i)	by delivering it to the person personally, or	16
(ii)	by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	17 18 19 20 21
(iii)	by sending it by facsimile transmission to the facsimile number of the person, or	22 23
(b)	in the case of a body corporate:	24
(i)	by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	25 26 27 28 29
(ii)	by sending it by facsimile transmission to the facsimile number of the body corporate.	30 31
(2)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	32 33 34
45	Regulations	35
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	36 37 38 39

Clause 46 Defamation Bill 2005

Part 5 Miscellaneous

46	Repeal of Defamation Act 1974 No 18	1
	The <i>Defamation Act 1974</i> is repealed.	2
47	Savings, transitional and other provisions	3
	Schedule 4 has effect.	4
48	Amendment of other Acts	5
	The Acts specified in Schedules 5 and 6 are amended as set out in those Schedules.	6 7
49	Review of Act	8
	(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	9 10 11
	(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	12 13
	(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	14 15

Schedule 1 Additional publications to which absolute privilege applies

(Section 27 (2) (d))

1 Matters relating to Ombudsman (cf Act No 18 1974, s 17A)

- (1) Without limiting section 27 (2) (a)–(c), matter that is published:
- (a) to or by the Ombudsman in his or her capacity as the Ombudsman, or
 - (b) to any member of staff of the Ombudsman in his or her capacity as such a member, or
 - (c) to a member of Parliament for the purposes of section 12 (2) of the *Ombudsman Act 1974* or section 127 (7) of the *Police Act 1990*, or
 - (d) in a report under section 31AA of the *Ombudsman Act 1974* or under section 169 of the *Police Act 1990*, or
 - (e) in a copy of a report previously made public under section 31AA of the *Ombudsman Act 1974* where the copy of the report is published under the authority of the Minister for the time being administering that Act, or
 - (f) in a copy of a report previously made public under section 169 of the *Police Act 1990* where the copy of the report is published under the authority of the Minister for the time being administering that Act.
- (2) Subclause (1) (a) applies in relation to an acting Ombudsman, a Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the Ombudsman.

2 Matters relating to Privacy Commissioner (cf Act No 18 1974, s 17B)

Without limiting section 27 (2) (a)–(c), matter that is published:

- (a) to or by the Privacy Commissioner or an acting Privacy Commissioner in his or her capacity as the Privacy Commissioner or an acting Privacy Commissioner, or
- (b) to any member of staff of the Privacy Commissioner in his or her capacity as such a member, or
- (c) in a report under section 65 of the *Privacy and Personal Information Protection Act 1998*, or
- (d) in a copy of a report previously made public under section 65 of the *Privacy and Personal Information Protection Act 1998* where the copy of the report is published under the authority of the Minister for the time being administering that Act.

3	Matters relating to Law Reform Commission (cf Act No 18 1974, s 17BA)	1
(1)	Without limiting section 27 (2) (a)–(c), matter that is published:	2
(a)	in a report under section 13 (6) of the <i>Law Reform Commission Act 1967</i> , or	3
		4
(b)	in the course of the proceedings of, or in the course of an inquiry held by, the Law Reform Commission under the <i>Law Reform Commission Act 1967</i> , or	5
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(c)	by the Law Reform Commission in connection with a reference to it under the <i>Law Reform Commission Act 1967</i> .	8
		9
(2)	Subclause (1) (b) and (c) does not apply to a report referred to in section 13 of the <i>Law Reform Commission Act 1967</i> .	10
		11
4	Matters arising under Workers Compensation Acts (cf Act No 18 1974, ss 17BB and 17BD)	12
		13
(1)	Conciliation officers and conciliators	14
	Without limiting section 27 (2) (a)–(c), matter that is published:	15
(a)	to or by a conciliation officer or conciliator for the purpose of any proceedings under the <i>Workers Compensation Act 1987</i> or the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , or	16
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(b)	by any such conciliation officer or conciliator where the matter published is a report of a decision or determination in respect of any such proceedings or of the reasons for such a decision or determination, or	20
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(c)	by any such conciliation officer or conciliator where the matter published is a conciliation certificate under section 84 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> .	24
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(2)	Insurers	28
	Without limiting section 27 (2) (a)–(c), matter that is published:	29
(a)	to or by an insurer for the purpose of any claim or any proceedings arising from any claim under the <i>Workers Compensation Act 1987</i> or the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , or	30
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(b)	by an insurer where the matter published is a report of a decision or determination in respect of any such claim and of the reason for that decision or determination, or	34
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(c)	by the WorkCover Authority of New South Wales while providing access to information under section 72 of the	37
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	<i>Workplace Injury Management and Workers Compensation Act 1998</i> , or	1
		2
(d)	to or by an insurer pursuant to an exchange of information authorised by section 72 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> .	3
		4
		5
(3)	References to “insurer” and “claim”	6
	In subclause (2), a reference to insurer or claim has the same meaning as it has in the provision of the <i>Workers Compensation Act 1987</i> or of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> to which the reference relates.	7
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5	Matters arising under Motor Accidents Acts (cf Act No 18 1974, s 17BC)	11
	Without limiting section 27 (2) (a)–(c), matter that is published:	12
(a)	to or by:	13
(i)	a licensed insurer (within the meaning of the <i>Motor Accidents Act 1988</i> or the <i>Motor Accidents Compensation Act 1999</i>), or	14
		15
		16
(ii)	the Nominal Defendant,	17
	for the purpose of any claim or any proceedings arising from any claim under the <i>Motor Accidents Act 1988</i> or the <i>Motor Accidents Compensation Act 1999</i> , or	18
		19
		20
(b)	by any such licensed insurer or the Nominal Defendant where the matter published is a report of a decision or determination in respect of any such claim and of the reason for that decision or determination, or	21
		22
		23
		24
(c)	by the Motor Accidents Authority of New South Wales where the matter published is the whole or any part of the register maintained by the Authority under section 120 of the <i>Motor Accidents Compensation Act 1999</i> .	25
		26
		27
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6	Certain decisions of public health organisations under Health Services Act 1997 (cf Act No 18 1974, s 17C)	29
	Without limiting section 27 (2) (a)–(c), matter that is published under section 105 of the <i>Health Services Act 1997</i> that relates to a decision, or the reasons for a decision, of a public health organisation referred to in that section.	30
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- 7 Matters arising out of proceedings of Parole Board, Serious Offenders Review Council and Serious Offenders Management Committee** (cf Act No 18 1974, s 17CA) 1
2
- Without limiting section 27 (2) (a)–(c), matter that is published: 3
- (a) by the Parole Board or the Serious Offenders Review Council in 4
a report or other document under the *Crimes (Administration of 5
Sentences) Act 1999*, or 6
 - (b) in the course of any proceedings of the following bodies: 7
 - (i) the Parole Board or a Division or a committee of that 8
Board, 9
 - (ii) the Serious Offenders Review Council or a Division or a 10
committee of that Council, 11
 - (iii) the Serious Offenders Management Committee or a 12
subcommittee of that Committee, or 13
 - (c) by a body referred to in paragraph (b) in a report of any 14
proceedings referred to in that paragraph. 15
- 8 Matters relating to Inspector-General of Corrective Services** (cf Act No 18 16
1974, s 17CB) 17
- Without limiting section 27 (2) (a)–(c), matter that is published: 18
- (a) to or by the Inspector-General of Corrective Services in his or her 19
capacity as the Inspector-General of Corrective Services, or 20
 - (b) to or by a member of staff of the Inspector-General in his or her 21
capacity as such a member. 22
- 9 Matters arising under Anti-Discrimination Act 1977** (cf Act No 18 1974, 23
s 17D) 24
- (1) Without limiting section 27 (2) (a)–(c), matter that is published for the 25
purpose of the execution or administration of the *Anti-Discrimination 26
Act 1977*: 27
 - (a) to or by a member of the Administrative Decisions Tribunal, or 28
 - (b) to or by a member of the Anti-Discrimination Board constituted 29
under the *Anti-Discrimination Act 1977*, or 30
 - (c) to or by the President of the Anti-Discrimination Board, or any 31
officer of the President, to the Registrar of the Administrative 32
Decisions Tribunal, or 33
 - (d) to a member of staff of a Department within the meaning of the 34
Public Sector Employment and Management Act 2002 appointed 35
or employed to assist in the execution or administration of the 36
Anti-Discrimination Act 1977, or 37

	(e) to or by the Director of Equal Opportunity in Public Employment appointed under the <i>Anti-Discrimination Act 1977</i> .	1 2
(2)	Without limiting section 27 (2) (a)–(c), matter that is published in:	3
	(a) a report referred to in section 94A (2) of the <i>Anti-Discrimination Act 1977</i> of the President of the Anti-Discrimination Board constituted under that Act made to the Administrative Decisions Tribunal, or	4 5 6 7
	(b) a report referred to in section 120 (2), 121, 122 or 122R (b) of that Act to the Minister administering that Act.	8 9
10	Appeals under Racing Appeals Tribunal Act 1983 (cf Act No 18 1974, s 17DA)	10 11
	Without limiting section 27 (2) (a)–(c), matter that is published:	12
	(a) in the course of an appeal under the <i>Racing Appeals Tribunal Act 1983</i> , or	13 14
	(b) by the Racing Appeals Tribunal in an official report of its decision in respect of any such appeal or of the reasons of that Tribunal for a decision.	15 16 17
11	Matters arising under Thoroughbred Racing Act 1996 (cf Act No 18 1974, s 17DB)	18 19
	Without limiting section 27 (2) (a)–(c), matter that is published:	20
	(a) in the course of proceedings in respect of an inquiry conducted by Racing New South Wales, or	21 22
	(b) by Racing New South Wales in a report it makes in respect of such an inquiry.	23 24
12	Matters arising under Greyhound and Harness Racing Administration Act 2004 (cf Act No 18 1974, s 17E)	25
	Without limiting section 27 (2) (a)–(c), matter that is published:	26
	(a) in the course of an appeal under the <i>Greyhound and Harness Racing Administration Act 2004</i> , or	27 28
	(b) by the Greyhound and Harness Racing Appeals Tribunal or the Greyhound and Harness Racing Regulatory Authority in an official report of its decision in respect of any such appeal or of the reasons for its decision, or	29 30 31 32
	(c) in the course of proceedings in respect of an inquiry conducted by that Authority in the exercise of its regulatory functions (including the exercise of any such function by a steward of that Authority), or	33 34 35 36

(d)	by that Authority in a report it makes in respect of such an inquiry.	1 2
13	Matters relating to farm produce sellers (cf Act No 18 1974, s 17EA)	3
	Without limiting section 27 (2) (a)–(c), matter that is published in a notice under section 47 or 48 of the <i>Farm Produce Act 1983</i> .	4 5
14	Matters arising under Legal Aid Commission Act 1979 (cf Act No 18 1974, s 17F)	6 7
	Without limiting section 27 (2) (a)–(c), matter that is published for the purpose of the execution or administration of the <i>Legal Aid Commission Act 1979</i> :	8 9 10
(a)	to or by the Legal Aid Commission of New South Wales constituted under that Act, or	11 12
(b)	to or by a member of staff of the Commission or a committee established under that Act.	13 14
15	Matters arising under Medical Practice Act 1992 (cf Act No 18 1974, s 17FA)	15
(1)	Without limiting section 27 (2) (a)–(c), matter that is published:	16
(a)	to or by any of the following for the purpose of the assessment or referral of a complaint or other matter or the holding of any inquiry, performance review, investigation or appeal under the <i>Medical Practice Act 1992</i> :	17 18 19 20
(i)	the New South Wales Medical Board,	21
(ii)	an Impaired Registrants Panel,	22
(iii)	a Performance Review Panel,	23
(iv)	a Professional Standards Committee,	24
(v)	the Medical Tribunal,	25
(vi)	a member of any of the bodies referred to in subparagraphs (i)–(v),	26 27
(vii)	an assessor, or	28
(b)	by a body or person referred to in paragraph (a) where the matter published is a report of a decision or determination in respect of a complaint or other matter or any inquiry, performance review, investigation or appeal, or of the reasons for such a decision or determination.	29 30 31 32 33
(2)	In this clause:	34
(a)	a reference to the New South Wales Medical Board includes a reference to a committee of the Board, and	35 36

(b)	a reference to a member of the Board includes a reference to a member of any such committee.	1 2
16	Matters arising under Coal Mines Regulation Act 1982 (cf Act No 18 1974, s 17G)	3 4
	Without limiting section 27 (2) (a)–(c), matter that is published:	5
(a)	in a report by an inspector, a mine safety officer, an investigator or a Board of Inquiry, under the <i>Coal Mines Regulation Act 1982</i> , to or by the Minister administering that Act or the Director-General of the Department of Primary Industries, or	6 7 8 9
(b)	by a Board of Inquiry in the course of a special inquiry under the <i>Coal Mines Regulation Act 1982</i> .	10 11
17	Matters arising under Mines Inspection Act 1901 (cf Act No 18 1974, s 17U)	12
	Without limiting section 27 (2) (a)–(c), matter that is published:	13
(a)	in a report by an inspector, a mine safety officer, an investigator or a Board of Inquiry, under the <i>Mines Inspection Act 1901</i> , to or by the Minister administering that Act or the Director-General of the Department of Primary Industries, or	14 15 16 17
(b)	by a Board of Inquiry in the course of a special inquiry under the <i>Mines Inspection Act 1901</i> .	18 19
18	Matters arising under Legal Profession Act 2004 (cf Act No 18 1974, s 17J)	20
	Without limiting section 27 (2) (a)–(c), matter that is published:	21
(a)	to or by any of the following for the purpose of the making or referral of a complaint, or the investigation, hearing or review of a complaint, under Chapter 4 of the <i>Legal Profession Act 2004</i> :	22 23 24
(i)	the Bar Council,	25
(ii)	a member of the Bar Council as such a member,	26
(iii)	a committee or subcommittee of the Bar Council, or any member of a committee or subcommittee of the Bar Council,	27 28 29
(iv)	the Law Society Council,	30
(v)	a member of the Law Society Council in his or her capacity as such a member,	31 32
(vi)	a committee or subcommittee of the Law Society Council, or any member of a committee or subcommittee of the Law Society Council,	33 34 35
(vii)	the Bar Association,	36
(viii)	the Law Society,	37
(ix)	the Legal Services Commissioner,	38

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| <p>(x) any member of the staff of any of the above as such a member, or</p> <p>(b) by a body or person referred to in paragraph (a) where the matter published is a report of the decision or determination of the body or person in respect of a complaint, or of the reasons for such a decision or determination, under Chapter 4 of the <i>Legal Profession Act 2004</i>, or</p> <p>(c) by a person or body referred to in paragraph (a) to such a person or body, where the matter published is information that is published in accordance with the exercise of functions under Chapter 2 or Part 7.3 of the <i>Legal Profession Act 2004</i>, or</p> <p>(d) by a person or body referred to in paragraph (a) in a report of the decision or determination of the Bar Council or the Law Society Council in respect of the refusal to issue, cancellation or suspension of a practising certificate.</p> <p>19 Matters arising under Independent Commission Against Corruption Act 1988 (cf Act No 18 1974, s 17K)</p> <p>(1) Without limiting section 27 (2) (a)–(c), matter that is published:</p> <p style="padding-left: 20px;">(a) to or by the Independent Commission Against Corruption, or</p> <p style="padding-left: 20px;">(b) to or by the Commissioner for the Commission as Commissioner, or</p> <p style="padding-left: 20px;">(c) to or by the Inspector of the Independent Commission Against Corruption as Inspector, or</p> <p style="padding-left: 20px;">(d) to any officer of the Commission or officer of the Inspector (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i>) as such an officer.</p> <p>(2) This clause applies in relation to any compulsory examination or public inquiry before the Independent Commission Against Corruption or inquiry before the Inspector of the Independent Commission Against Corruption or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector.</p> <p>20 Matters arising under New South Wales Crime Commission Act 1985 (cf Act No 18 1974, s 17L)</p> <p>(1) Without limiting section 27 (2) (a)–(c), matter that is published:</p> <p style="padding-left: 20px;">(a) to or by the New South Wales Crime Commission, or</p> <p style="padding-left: 20px;">(b) to any member of the Commission or member of the staff of the Commission in his or her capacity as such a member.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> |
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(2)	This clause applies in relation to any hearing before the New South Wales Crime Commission or any other matter relating to the powers, authorities, duties or functions of the Commission.	1 2 3
21	Matters arising under Independent Pricing and Regulatory Tribunal Act 1992 (cf Act No 18 1974, s 17M)	4
(1)	Without limiting section 27 (2) (a)–(c), matter that is published:	5
(a)	to or by the Independent Pricing and Regulatory Tribunal of New South Wales, or	6 7
(b)	to any member of the Tribunal or member of the staff of the Tribunal in his or her capacity as such a member.	8 9
(2)	This clause applies in relation to any hearing before the Independent Pricing and Regulatory Tribunal of New South Wales or any other matter relating to the powers, authorities, duties or functions of the Tribunal.	10 11 12 13
22	Matters arising under Casino Control Act 1992 (cf Act No 18 1974, s 17N)	14
	Without limiting section 27 (2) (a)–(c), matter that is published to or by the New South Wales Casino Control Authority, or the person presiding at an inquiry under section 143 of the <i>Casino Control Act 1992</i> , for the purpose of such an inquiry.	15 16 17 18
23	Matters relating to HomeFund Commissioner (cf Act No 18 1974, s 17O)	19
	Without limiting section 27 (2) (a)–(c), matter that is published:	20
(a)	to or by the HomeFund Commissioner or an acting HomeFund Commissioner in his or her capacity as the HomeFund Commissioner or an acting HomeFund Commissioner, or	21 22 23
(b)	to any member of the staff of the HomeFund Commissioner in his or her capacity as such a member, or	24 25
(c)	in a report under section 34 (3) of the <i>HomeFund Commissioner Act 1993</i> , or	26 27
(d)	in a copy of a report previously made public under section 34 (3) of the <i>HomeFund Commissioner Act 1993</i> where the copy of the report is published under the authority of the Minister for the time being administering that Act.	28 29 30 31
24	Matters arising under Protected Estates Act 1983 (cf Act No 18 1974, s 17P)	32
	Without limiting section 27 (2) (a)–(c), matter that is published in a report to the Protective Commissioner under section 79 of the <i>Protected Estates Act 1983</i> .	33 34 35

25	Matters arising under Public Finance and Audit Act 1983 (cf Act No 18 1974, s 17Q)	1 2
	Without limiting section 27 (2) (a)–(c), matter that is published:	3
	(a) to or by the Auditor-General in his or her capacity as Auditor-General of a disclosure made in relation to a complaint under Division 7 of Part 3 of the <i>Public Finance and Audit Act 1983</i> , or	4 5 6 7
	(b) to or by a member of staff of the Audit Office in his or her capacity as such a member of a disclosure made in relation to a complaint under Division 7 of Part 3 of the <i>Public Finance and Audit Act 1983</i> .	8 9 10 11
26	Matters arising under Protected Disclosures Act 1994 (cf Act No 18 1974, s 17QA)	12 13
	(1) Without limiting section 27 (2) (a)–(c), matter that is published to or by a public official or public authority referred to in section 8 (1) (b) or (c) of the <i>Protected Disclosures Act 1994</i> of a disclosure made to the public official or public authority in relation to an allegation of corrupt conduct, maladministration or serious and substantial waste of public money or local government money if the publication is for the purpose of investigating that allegation.	14 15 16 17 18 19 20
	(2) In this clause:	21
	<i>local government money</i> includes all revenue, loans and other money collected, received or held by, for or on account of:	22 23
	(a) a council, or	24
	(b) a county council,	25
	within the meaning of the <i>Local Government Act 1993</i> .	26
27	Matters arising under Health Care Complaints Act 1993 (cf Act No 18 1974, s 17R)	27 28
	Without limiting section 27 (2) (a)–(c), matter that is published:	29
	(a) to or by the Health Care Complaints Commission of or concerning a complaint by a complainant under the <i>Health Care Complaints Act 1993</i> , or	30 31 32
	(b) to or by a conciliator for the purpose of the conciliation of a complaint under the <i>Health Care Complaints Act 1993</i> , or	33 34
	(c) by any such conciliator in a report, or while furnishing information, under section 53 or 54 of the <i>Health Care Complaints Act 1993</i> , or	35 36 37
	(d) in a report made under section 30 of the <i>Health Care Complaints Act 1993</i> (or that section as applied by section 61 of that Act), or	38 39

(e)	in a report made under section 62 (1) of the <i>Health Care Complaints Act 1993</i> by the Health Care Complaints Commission constituted under that Act.	1 2 3
28	Matters arising under Police Integrity Commission Act 1996 (cf Act No 18 1974, s 17S)	4 5
(1)	Without limiting section 27 (2) (a)–(c), matter that is published:	6
(a)	to or by the Police Integrity Commission, or	7
(b)	to or by the Commissioner for the Police Integrity Commission in his or her capacity as Commissioner, or	8 9
(c)	to or by the Inspector of the Police Integrity Commission in his or her capacity as Inspector, or	10 11
(d)	to any officer of the Commission or officer of the Inspector (within the meaning of the <i>Police Integrity Commission Act 1996</i>) in his or her capacity as such an officer.	12 13 14
(2)	This clause applies in relation to any hearing before the Police Integrity Commission or Inspector of the Police Integrity Commission or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector.	15 16 17 18
29	Matters relating to Local Government Pecuniary Interest and Disciplinary Tribunal (cf Act No 18 1974, s 17T)	19
(1)	Without limiting section 27 (2) (a)–(c), matter that is published:	20
(a)	to or by the Local Government Pecuniary Interest and Disciplinary Tribunal constituted under the <i>Local Government Act 1993</i> for the purpose of the execution or administration of that Act, or	21 22 23 24
(b)	by that Tribunal in an official report of a decision of that Tribunal or of the reasons of that Tribunal for a decision.	25 26
(2)	Without limiting section 27 (2) (a)–(c), matter that is published to or by the Department of Local Government or the Director-General of that Department if the matter is contained in:	27 28 29
(a)	an official report of a decision of the Local Government Pecuniary Interest and Disciplinary Tribunal, or	30 31
(b)	a statement of a decision of that Tribunal or of the reasons of that Tribunal for a decision,	32 33
	provided or made public by the Tribunal under section 484 (3) of the <i>Local Government Act 1993</i> .	34 35

30	Matters arising under Administrative Decisions Tribunal Act 1997 (cf Act No 18 1974, s 17TA)	1 2
	Without limiting section 27 (2) (a)–(c), matter that is published to or by the Administrative Decisions Tribunal under the <i>Administrative Decisions Tribunal Act 1997</i> (including matter that is published by that Tribunal in an official report of a decision of that Tribunal or of the reasons of that Tribunal for a decision).	3 4 5 6 7
31	Matters relating to Aboriginal Land Councils Pecuniary Interest Tribunal (cf Act No 18 1974, s 17TB)	8
	(1) Without limiting section 27 (2) (a)–(c), matter that is published:	9
	(a) to or by the Aboriginal Land Councils Pecuniary Interest Tribunal constituted under the <i>Aboriginal Land Rights Act 1983</i> for the purpose of the execution or administration of that Act, or	10 11 12
	(b) by that Tribunal in an official report of a decision of that Tribunal or of the reasons of that Tribunal for a decision.	13 14
	(2) Without limiting section 27 (2) (a)–(c), matter that is published to or by the Department of Aboriginal Affairs or the Director-General of that Department if the matter is contained in:	15 16 17
	(a) an official report of a decision of the Aboriginal Land Councils Pecuniary Interest Tribunal, or	18 19
	(b) a statement of a decision of that Tribunal or of the reasons of that Tribunal for a decision,	20 21
	provided or made public by the Tribunal under section 213 (3) of the <i>Aboriginal Land Rights Act 1983</i> .	22 23
32	Matters arising under Surveying Act 2002 (cf Act No 18 1974, s 17JA)	24
	Without limiting section 27 (2) (a)–(c), matter that is published:	25
	(a) to or by any of the following:	26
	(i) the Board of Surveying and Spatial Information,	27
	(ii) a member of that Board as such a member,	28
	(iii) a committee or subcommittee of that Board, or any member of a committee or subcommittee of that Board,	29 30
	for the purpose of the making or referral of a complaint of professional incompetence or professional misconduct, or the investigation of such a complaint, made in relation to a registered surveyor under the <i>Surveying Act 2002</i> , or	31 32 33 34

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- (b) by a body or person referred to in paragraph (a) of a report of the decision or determination of the body or person in respect of a complaint, or of the reasons for such a decision or determination, made in relation to a registered surveyor under the *Surveying Act 2002*.

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Schedule 2 Additional kinds of public documents

(Section 28 (4) (g))

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| 1 Documents arising under Medical Practice Act 1992 (cf Act No 18 1974, | 3 |
| cl 3 (3A) of Sch 2) | 4 |
| Without limiting section 28 (4) (a)–(f), a document that consists of a | 5 |
| report made by: | 6 |
| (a) the New South Wales Medical Board, or | 7 |
| (b) a Professional Standards Committee, or | 8 |
| (c) the Medical Tribunal, | 9 |
| of its decision or determination in respect of a complaint or an inquiry | 10 |
| or appeal, and of the reasons for that decision or determination, under | 11 |
| the <i>Medical Practice Act 1992</i> . | 12 |
| 2 Documents arising under Legal Profession Act 2004 (cf Act No 18 1974, | 13 |
| cl 3 (5) of Sch 2) | 14 |
| Without limiting section 28 (4) (a)–(f), a document that consists of a | 15 |
| report made by: | 16 |
| (a) the Bar Council, or | 17 |
| (b) the Law Society Council, or | 18 |
| (c) the Legal Services Commissioner, | 19 |
| of the decision or determination of that body or person in respect of a | 20 |
| complaint, and of the reasons for that decision or determination, under | 21 |
| Chapter 4 of the <i>Legal Profession Act 2004</i> . | 22 |
| 3 Documents arising under Workers Compensation Acts (cf Act No 18 1974, | 23 |
| cl 3 (6) of Sch 2) | 24 |
| Without limiting section 28 (4) (a)–(f), a document that consists of: | 25 |
| (a) a report made by a conciliation officer, conciliator or member of | 26 |
| the Workers Compensation Commission of New South Wales of | 27 |
| his or her decision or determination in respect of any proceedings | 28 |
| under the <i>Workers Compensation Act 1987</i> or the <i>Workplace</i> | 29 |
| <i>Injury Management and Workers Compensation Act 1998</i> , or | 30 |
| (b) a conciliation certificate under the section 98D of the <i>Workers</i> | 31 |
| <i>Compensation Act 1987</i> or section 84 of the <i>Workplace Injury</i> | 32 |
| <i>Management and Workers Compensation Act 1998</i> . | 33 |
| 4 Documents relating to Local Government Pecuniary Interest and | |
| Disciplinary Tribunal (cf Act No 18 1974, cl 3 (7) of Sch 2) | 34 |
| Without limiting section 28 (4) (a)–(f), a document that consists of a | 35 |
| decision (including reasons given for the decision) made by the Local | 36 |

	Government Pecuniary Interest and Disciplinary Tribunal under the <i>Local Government Act 1993</i> .	1 2
5	Documents relating to Administrative Decisions Tribunal (cf Act No 18 1974, cl 3 (8) of Sch 2)	3 4
	Without limiting section 28 (4) (a)–(f), a document that consists of a report made by the Administrative Decisions Tribunal of the decision of that Tribunal in respect of any proceedings before it, and of the reasons for that decision, under the <i>Administrative Decisions Tribunal Act 1997</i> .	5 6 7 8
6	Documents relating to Aboriginal Land Councils Pecuniary Interest Tribunal (cf Act No 18 1974, cl 3 (9) of Sch 2)	9
	Without limiting section 28 (4) (a)–(f), a document that consists of a decision (including reasons given for the decision) made by the Aboriginal Land Councils Pecuniary Interest Tribunal under the <i>Aboriginal Land Rights Act 1983</i> .	10 11 12 13
7	Documents relating to Special Commissions of Inquiry	14
	Without limiting section 28 (4) (a)–(f), a document that consists of a report made to the Governor by a Commissioner under section 10 of the <i>Special Commissions of Inquiry Act 1983</i> .	15 16 17
8	Documents produced to certain parliamentary committees conducted in private	18 19
	Without limiting section 28 (4) (a)–(f), any of the following documents (or parts of documents):	20 21
	(a) a document (or part of a document) produced to the Committee on Children and Young People constituted under the <i>Commission for Children and Young People Act 1998</i> in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with clause 6 of Schedule 1 to that Act,	22 23 24 25 26 27
	(b) a document (or part of a document) produced to the Committee on the Health Care Complaints Commission appointed as referred to in section 64 of the <i>Health Care Complaints Act 1993</i> in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with section 72 of that Act,	28 29 30 31 32 33
	(c) a document (or part of a document) produced to the Committee on the Independent Commission Against Corruption constituted under the <i>Independent Commission Against Corruption Act 1988</i> in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with section 70 of that Act,	34 35 36 37 38 39

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Schedule 2 Additional kinds of public documents

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| (d) | a document (or part of a document) produced to the Legislation Review Committee constituted under the <i>Legislation Review Act 1987</i> in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with section 12 of that Act, | 1
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| (e) | a document (or part of a document) produced to the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the <i>Ombudsman Act 1974</i> in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with section 31H of that Act, | 6
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| (f) | a document (or part of a document) produced to the Public Accounts Committee constituted under Part 4 of the <i>Public Finance and Audit Act 1983</i> in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with section 58 of that Act, | 12
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| (g) | a document (or part of a document) produced to the Committee on the Office of the Valuer-General constituted under Part 8 of the <i>Valuation of Land Act 1916</i> in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with section 92 of that Act. | 17
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Schedule 3 Additional proceedings of public concern

(Section 29 (4) (p))

- 1 **Proceedings relating to Appeal Panel under Thoroughbred Racing Act 1996** (cf Act No 18 1974, cl 2 (8) of Sch 2)
 - Without limiting section 29 (4) (a)–(o), proceedings on an appeal to the Appeal Panel under the *Thoroughbred Racing Act 1996*.
- 2 **Proceedings relating to Privacy Commissioner** (cf Act No 18 1974, cl 2 (11) of Sch 2)
 - Without limiting section 29 (4) (a)–(o), proceedings of the Privacy Commissioner, but only to the extent that those proceedings are included in a report previously made public under section 65 of the *Privacy and Personal Information Protection Act 1998*.
- 3 **Proceedings relating to Anti-Discrimination Board** (cf Act No 18 1974, cl 2 (12) of Sch 2)
 - Without limiting section 29 (4) (a)–(o), proceedings at an investigation, inquiry or examination conducted by or on behalf of the Anti-Discrimination Board constituted under the *Anti-Discrimination Act 1977*.
- 4 **Proceedings under Greyhound and Harness Racing Administration Act 2004** (cf Act No 18 1974, cl 2 (13) of Sch 2)
 - Without limiting section 29 (4) (a)–(o), proceedings:
 - (a) at an inquiry conducted by the Greyhound and Harness Racing Regulatory Authority in the exercise of its functions (including the exercise of any such functions by a steward of that Authority), or
 - (b) on an appeal to that Authority or the Greyhound and Harness Racing Appeals Tribunal under the *Greyhound and Harness Racing Administration Act 2004*.
- 5 **Proceedings relating to Racing New South Wales** (cf Act No 18 1974, cl 2 (13A) of Sch 2)
 - Without limiting section 29 (4) (a)–(o), proceedings at an inquiry conducted by Racing New South Wales under the *Thoroughbred Racing Act 1996*.

6	Proceedings relating to Racing Appeals Tribunal (cf Act No 18 1974, cl 2 (14) of Sch 2)	1 2
	Without limiting section 29 (4) (a)–(o), proceedings on an appeal to the Racing Appeals Tribunal under the <i>Racing Appeals Tribunal Act 1983</i> .	3 4
7	Proceedings under Medical Practice Act 1992 (cf Act No 18 1974, cl 2 (14A) of Sch 2)	5 6
	Without limiting section 29 (4) (a)–(o), proceedings under the <i>Medical Practice Act 1992</i> of any of the following:	7 8
	(a) the New South Wales Medical Board,	9
	(b) a Professional Standards Committee,	10
	(c) the Medical Tribunal.	11
8	Proceedings under Legal Profession Act 2004 (cf Act No 18 1974, cl 2 (16) of Sch 2)	12 13
	Without limiting section 29 (4) (a)–(o), proceedings under Chapter 4 of the <i>Legal Profession Act 2004</i> of any of the following:	14 15
	(a) the Bar Council,	16
	(b) the Law Society Council,	17
	(c) the Legal Services Commissioner.	18
9	Proceedings under Workers Compensation Acts (cf Act No 18 1974, cl 2 (17) of Sch 2)	19 20
	Without limiting section 29 (4) (a)–(o), proceedings of a conciliation officer, conciliator or member of the Commission under the <i>Workers Compensation Act 1987</i> or the <i>Workplace Injury Management and Workers Compensation Act 1998</i> .	21 22 23 24
10	Proceedings relating to New South Wales Crime Commission (cf Act No 18 1974, cl 2 (19) of Sch 2)	25 26
	Without limiting section 29 (4) (a)–(o), proceedings at a hearing held in public by the New South Wales Crime Commission.	27 28
11	Proceedings relating to Board of Inquiry under Coal Mines Regulation Act 1982 (cf Act No 18 1974, cl 2 (19A) of Sch 2)	29
	Without limiting section 29 (4) (a)–(o), proceedings at a special inquiry conducted by a Board of Inquiry under the <i>Coal Mines Regulation Act 1982</i> .	30 31 32

12	Proceedings relating to Board of Inquiry under Mines Inspection Act 1901 (cf Act No 18 1974, cl 2 (19B) of Sch 2)	1
	Without limiting section 29 (4) (a)–(o), proceedings at a special inquiry conducted by a Board of Inquiry under the <i>Mines Inspection Act 1901</i> .	2 3
13	Proceedings relating to HomeFund Commissioner (cf Act No 18 1974, cl 2 (20) of Sch 2)	4 5
	Without limiting section 29 (4) (a)–(o), proceedings of the HomeFund Commissioner, but only to the extent those proceedings are included in a report previously made public under section 34 (3) of the <i>HomeFund Commissioner Act 1993</i> .	6 7 8 9
14	Proceedings relating to Local Government Pecuniary Interest and Disciplinary Tribunal (cf Act No 18 1974, cl 2 (22) of Sch 2)	10
	Without limiting section 29 (4) (a)–(o), proceedings of the Local Government Pecuniary Interest and Disciplinary Tribunal under the <i>Local Government Act 1993</i> .	11 12 13
15	Proceedings relating to Administrative Decisions Tribunal (cf Act No 18 1974, cl 2 (23) of Sch 2)	14 15
	Without limiting section 29 (4) (a)–(o), proceedings held in public of the Administrative Decisions Tribunal.	16 17
16	Proceedings relating to Aboriginal Land Councils Pecuniary Interest Tribunal (cf Act No 18 1974, cl 2 (24) of Sch 2)	18
	Without limiting section 29 (4) (a)–(o), proceedings of the Aboriginal Land Councils Pecuniary Interest Tribunal under the <i>Aboriginal Land Rights Act 1983</i> .	19 20 21
17	Proceedings relating to certain parliamentary committees conducted in private	22 23
	Without limiting section 29 (4) (a)–(o), any of the following proceedings:	24 25
	(a) proceedings of the Committee on Children and Young People constituted under the <i>Commission for Children and Young People Act 1998</i> conducted in private, but only to the extent that those proceedings relate to the taking of evidence that is disclosed or published in accordance with clause 6 of Schedule 1 to that Act,	26 27 28 29 30 31
	(b) proceedings of the Committee on the Health Care Complaints Commission appointed as referred to in section 64 of the <i>Health Care Complaints Act 1993</i> conducted in private, but only to the extent that those proceedings relate to the taking of evidence that	32 33 34 35

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| | is disclosed or published in accordance with section 72 of that Act, | 1 |
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| (c) | proceedings of the Committee on the Independent Commission Against Corruption constituted under the <i>Independent Commission Against Corruption Act 1988</i> conducted in private, but only to the extent that those proceedings relate to the taking of evidence that is disclosed or published in accordance with section 70 of that Act, | 3 |
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| (d) | proceedings of the Legislation Review Committee constituted under the <i>Legislation Review Act 1987</i> conducted in private, but only to the extent that those proceedings relate to the taking of evidence that is disclosed or published in accordance with section 12 of that Act, | 9 |
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| (e) | proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the <i>Ombudsman Act 1974</i> conducted in private, but only to the extent that those proceedings relate to the taking of evidence that is disclosed or published in accordance with section 31H of that Act, | 14 |
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| (f) | proceedings of the Public Accounts Committee constituted under Part 4 of the <i>Public Finance and Audit Act 1983</i> conducted in private, but only to the extent that those proceedings relate to the taking of evidence that is disclosed or published in accordance with section 58 of that Act, | 20 |
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| (g) | proceedings of the Committee on the Office of the Valuer-General constituted under Part 8 of the <i>Valuation of Land Act 1916</i> conducted in private, but only to the extent that those proceedings relate to the taking of evidence that is disclosed or published in accordance with section 92 of that Act. | 25 |
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Schedule 4 Savings, transitional and other provisions

(Section 47)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Application of this Act

- (1) This Act applies to the publication of defamatory matter after the commencement of this Act, unless subclause (2) provides otherwise.
- (2) The provisions of this Act (other than this clause) do not apply to a cause of action for the publication of defamatory matter that accrues after the commencement of this Act (the *post-commencement action*) if:
 - (a) the post-commencement action is one of 2 or more causes of action in proceedings commenced by a plaintiff, and
 - (b) each cause of action in the proceedings accrues because of the publication of the same, or substantially the same, matter on separate occasions (whether by the same defendant or another defendant), and

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Schedule 4 Savings, transitional and other provisions

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- (c) one or more of the other causes of action in the proceedings accrued before the commencement of this Act (a ***pre-commencement action***), and
- (d) the post-commencement action accrued no later than 12 months after the date on which the earliest pre-commencement action in the proceedings accrued.
- (3) The existing law of defamation continues to apply to the following causes of action in the same way as it would have applied to those causes of action had this Act not been enacted:
- (a) any cause of action that accrued before the commencement of this Act,
- (b) any post-commencement action to which the other provisions of this Act do not apply because of subclause (2).
- (4) In this clause, the ***existing law of defamation*** means the law (including all relevant statutory provisions and principles and rules of the general law) that applied in this jurisdiction to the determination of civil liability for the publication of defamatory matter immediately before the commencement of this Act.
- 3 Amendments to this Act consequent on repeal of Coal Mines Regulation Act 1982**
- (1) In this clause:
relevant day means:
- (a) if the *Coal Mines Regulation Act 1982* is repealed by the *Coal Mine Health and Safety Act 2002* on or before 1 January 2006—1 January 2006, or
- (b) if the *Coal Mines Regulation Act 1982* is repealed by the *Coal Mine Health and Safety Act 2002* after 1 January 2006—the day on which that Act is repealed.
- (2) Clause 16 of Schedule 1 and clause 11 of Schedule 3 are amended on the relevant day by omitting “*Coal Mines Regulation Act 1982*” wherever occurring and by inserting instead “*Coal Mine Health and Safety Act 2002*”.
- 4 Amendments to this Act consequent on repeal of Mines Inspection Act 1901**
- (1) In this clause:
relevant day means:
- (a) if the *Mines Inspection Act 1901* is repealed by the *Mine Health and Safety Act 2004* on or before 1 January 2006—1 January 2006, or

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| <p>(b) if the <i>Mines Inspection Act 1901</i> is repealed by the <i>Mine Health and Safety Act 2004</i> after 1 January 2006—the day on which that Act is repealed.</p> <p>(2) Clause 17 of Schedule 1 and clause 12 of Schedule 3 are amended on the relevant day by omitting “<i>Mines Inspection Act 1901</i>” wherever occurring and by inserting instead “<i>Mine Health and Safety Act 2004</i>”.</p> <p>5 Amendments to this Act consequent on amendments made by Crimes (Administration of Sentences) Amendment (Parole) Act 2004</p> <p>(1) In this clause:
 <i>relevant day</i> means:</p> <p>(a) if Schedule 1 [1] to the <i>Crimes (Administration of Sentences) Amendment (Parole) Act 2004</i> commences on or before 1 January 2006—1 January 2006, or</p> <p>(b) if Schedule 1 [1] to the <i>Crimes (Administration of Sentences) Amendment (Parole) Act 2004</i> commences after 1 January 2006—the day on which Schedule 1 [1] to that Act commences.</p> <p>(2) Clause 7 of Schedule 1 is amended on the relevant day:</p> <p>(a) by omitting “Parole Board” wherever occurring and by inserting instead “State Parole Authority”, and</p> <p>(b) by omitting “that Board” and by inserting instead “that Authority”.</p> <p>6 Construction of references</p> <p>(1) In any other Act or instrument:</p> <p>(a) subject to paragraph (b), a reference to the <i>Defamation Act 1974</i> is taken to be a reference to this Act, and</p> <p>(b) a reference to a provision of the <i>Defamation Act 1974</i> is taken to be a reference to the corresponding provision or provisions (if any) of this Act or section 529 of the <i>Crimes Act 1900</i>.</p> <p>(2) Subclause (1) does not apply to any provision of another Act, or an instrument made under another Act, prescribed by the regulations.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> |
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Schedule 5	Amendment of other Acts concerning criminal defamation and limitation periods	1
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		3
	(Section 48)	4
5.1 Crimes Act 1900 No 40		5
[1] Part 14A, heading		6
Omit “Summary”. Insert instead “Miscellaneous”.		7
[2] Part 14A, Division 1, heading		8
Insert “summary” after “similar”.		9
[3] Part 14A, Division 2, heading		10
Omit “Miscellaneous”. Insert instead “Other”.		11
[4] Section 529		12
Insert before section 545A:		13
529 Criminal defamation		14
(1) Common law misdemeanour of criminal libel abolished		15
The common law misdemeanour of criminal libel remains abolished.		16
		17
(2) Blasphemous, seditious or obscene libel not affected		18
Subsection (1) does not affect the law relating to blasphemous, seditious or obscene libel.		19
		20
(3) Offence of criminal defamation		21
A person who, without lawful excuse, publishes matter defamatory of another living person (the <i>victim</i>):		22
		23
(a) knowing the matter to be false, and		24
(b) with intent to cause serious harm to the victim or any other person or being reckless as to whether such harm is caused,		25
is guilty of an offence.		26
Maximum penalty: 3 years imprisonment.		27
		28
(4) Lawful excuse		29
A defendant in proceedings for an offence under this section has a lawful excuse for the publication of defamatory matter about the victim if, and only if, the defendant would, having regard only		30
		31
		32

	to the circumstances happening before or at the time of the publication, have had a defence for the publication if the victim had brought civil proceedings for defamation against the defendant.	1 2 3 4
(5)	Prosecution to negative lawful excuse	5
	The prosecution bears the onus of negating the existence of a lawful excuse if, and only if, evidence directed to establishing the excuse is first adduced by or on behalf of the defendant.	6 7 8
(6)	Functions of jury	9
	On a trial before a jury for an offence under this section:	10
	(a) the question of whether the matter complained of is capable of bearing a defamatory meaning is a question for determination by the judicial officer presiding, and	11 12 13
	(b) the question of whether the matter complained of does bear a defamatory meaning is a question for the jury, and	14 15
	(c) the jury may give a general verdict of guilty or not guilty on the issues as a whole.	16 17
(7)	DPP to consent to proceedings	18
	Proceedings in a court for an offence under this section cannot be instituted without the written consent of the Director of Public Prosecutions.	19 20 21
(8)	Evidence of consent of DPP	22
	In those proceedings, a consent purporting to have been signed by the Director of Public Prosecutions is, without proof of the signature, evidence of that consent.	23 24 25
(9)	Proceedings for an offence do not bar civil proceedings	26
	The commencement of criminal proceedings for an offence under this section does not prevent:	27 28
	(a) the commencement of civil proceedings for defamation against the defendant in the criminal proceedings, or	29 30
	(b) the determination of the civil proceedings pending the determination of the criminal proceedings.	31 32
(10)	Proof of convictions for offences	33
	If the question whether or not a person committed an offence (other than offence under this section) arises in proceedings for an offence under this section, section 42 of the <i>Defamation Act 2005</i> applies to the proof of the commission of that offence in the	34 35 36 37

Defamation Bill 2005

Schedule 5	Amendment of other Acts concerning criminal defamation and limitation periods
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	same way as it applies to such proof in civil proceedings for defamation.	1 2
(11)	Interpretation	3
	In this section, <i>publish</i> and <i>defamatory</i> have the meanings that they have in the law of tort (as modified by the <i>Defamation Act 2005</i>) relating to defamation.	4 5 6
[5]	Section 579 Evidence of proceedings dealt with by way of recognizance after 15 years	7 8
	Omit section 579 (4). Insert instead:	9
(4)	This section does not affect the operation of section 529 (10), or the operation of section 178 (Convictions, acquittals and other judicial proceedings) of the <i>Evidence Act 1995</i> , for the purposes of section 529 (10).	10 11 12 13
5.2	Limitation Act 1969 No 31	14
[1]	Section 14B	15
	Omit the section. Insert instead:	16
14B	Defamation	17
	An action on a cause of action for defamation is not maintainable if brought after the end of a limitation period of 1 year running from the date of the publication of the matter complained of.	18 19 20
[2]	Part 3, Division 2A	21
	Omit the Division. Insert instead:	22
	Division 2A Defamation	23
56A	Extension of limitation period by court	24
(1)	A person claiming to have a cause of action for defamation may apply to the court for an order extending the limitation period for the cause of action.	25 26 27
(2)	A court must, if satisfied that it was not reasonable in the circumstances for the plaintiff to have commenced an action in relation to the matter complained of within 1 year from the date of the publication, extend the limitation period mentioned in section 14B to a period of up to 3 years running from the date of the publication.	28 29 30 31 32 33

(3)	A court may not order the extension of the limitation period for a cause of action for defamation other than in the circumstances specified in subsection (2).	1 2 3
56B	Effect of order	4
	If a court orders the extension of a limitation period for a cause of action under section 56A, the limitation period is accordingly extended for the purposes of:	5 6 7
(a)	an action brought by the applicant in that court on the cause of action that the applicant claims to have, and	8 9
(b)	section 26 (1) (b) in relation to any associated contribution action brought by the person against whom the cause of action lies.	10 11 12
56C	Costs	13
	Without affecting any discretion that a court has in relation to costs, a court hearing an action brought as a result of an order under section 56A may reduce the costs otherwise payable to a successful plaintiff, on account of the expense to which the defendant has been put because the action was commenced outside the original limitation period.	14 15 16 17 18 19
56D	Prior expiry of limitation period	20
	An order for the extension of a limitation period, and an application for such an order, may be made under this Division even though the limitation period has already expired.	21 22 23
[3]	Schedule 5 Further transitional provisions	24
	Omit the heading “ Limitation (Amendment) Act 1990 ”. Insert instead:	25
	Part 1 Provisions consequent on enactment of Limitation (Amendment) Act 1990	26 27
[4]	Schedule 5, clauses 1 and 4 (5)	28
	Omit “this Schedule” wherever occurring. Insert instead “this Part”.	29

[5] Schedule 5, Part 2	1
Insert after clause 5:	2
 Part 2 Provisions consequent on enactment of Defamation Act 2005	3 4
 6 Definition	5
In this Part:	6
<i>new defamation provisions</i> means:	7
(a) section 14B (as substituted by the <i>Defamation Act 2005</i>),	8
and	9
(b) Division 2A of Part 3 (as substituted by the <i>Defamation</i>	10
<i>Act 2005</i>).	11
 7 Application of amendments made by Defamation Act 2005	12
(1) The new defamation provisions apply to the publication of	13
defamatory matter after the commencement of those provisions,	14
unless subclause (2) provides otherwise.	15
(2) The new defamation provisions do not apply to a cause of action	16
for the publication of defamatory matter that accrues after the	17
commencement of those provisions (the <i>post-commencement</i>	18
<i>action</i>) if:	19
(a) the post-commencement action is one of 2 or more causes	20
of action in proceedings commenced by a plaintiff, and	21
(b) each cause of action in the proceedings accrues because of	22
the publication of the same, or substantially the same,	23
matter on separate occasions (whether by the same	24
defendant or another defendant), and	25
(c) one or more of the other causes of action in the	26
proceedings accrued before the commencement of the new	27
defamation provisions (a <i>pre-commencement action</i>), and	28
(d) the post-commencement action accrued no later than	29
12 months after the date on which the earliest	30
pre-commencement action in the proceedings accrued.	31
(3) The existing limitation law continues to apply to the following	32
causes of action in the same way as it would have applied to those	33
causes of action had the new defamation provisions not been	34
enacted:	35
(a) any cause of action that accrued before the new defamation	36
provisions,	37

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| (b) | any post-commencement action to which the new
defamation provisions do not apply because of subclause
(2). | 1
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| (4) | In this clause, the <i>existing limitation law</i> means the provisions of
this Act that applied in relation to the limitation period for
defamation actions immediately before the commencement of
the new defamation provisions. | 4
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Schedule 6 Consequential amendment of other Acts

(Section 48)

6.1 Anti-Discrimination Act 1977 No 48**[1] Section 20C Racial vilification unlawful**

Omit section 20C (2) (b). Insert instead:

- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the *Defamation Act 2005* or otherwise) in proceedings for defamation, or

[2] Section 38S Transgender vilification unlawful

Omit section 38S (2) (b). Insert instead:

- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the *Defamation Act 2005* or otherwise) in proceedings for defamation, or

[3] Section 49ZT Homosexual vilification unlawful

Omit section 49ZT (2) (b). Insert instead:

- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the *Defamation Act 2005* or otherwise) in proceedings for defamation, or

[4] Section 49ZXB HIV/AIDS vilification unlawful

Omit section 49ZXB (2) (b). Insert instead:

- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the *Defamation Act 2005* or otherwise) in proceedings for defamation, or

6.2 Civil Liability Act 2002 No 22**[1] Section 67 Application of Part**

Insert “or civil liability for defamation” after “section 3B” in section 67 (2).

[2] Section 67, note	1
Insert at the end of the section:	2
Note. Section 20 of the <i>Defamation Act 2005</i> makes similar provision to this Part about the effect of apologies in defamation proceedings.	3
	4
6.3 Commission for Children and Young People Act 1998 No 146	5
Schedule 1 Parliamentary Joint Committee	6
Omit clause 6 (8). Insert instead:	7
(8) If evidence taken by the Parliamentary Joint Committee in private is disclosed or published in accordance with this clause, sections 5 and 6 of the <i>Parliamentary Papers (Supplementary Provisions) Act 1975</i> apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.	8
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Note. The <i>Defamation Act 2005</i> makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Parliamentary Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this clause.	14
	15
Section 28 of the <i>Defamation Act 2005</i> (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.	16
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Section 29 of the <i>Defamation Act 2005</i> (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.	19
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6.4 District Court Act 1973 No 9	26
[1] Section 4 Definitions: general	27
Insert after section 4 (11):	28
(12) Notes included in this Act do not form part of this Act.	29
[2] Section 76A Action to be tried without jury unless jury required in interests of justice	30
	31
Omit section 76A (4). Insert instead:	32
(4) This section does not apply to any action for defamation.	33
Note. Section 21 of the <i>Defamation Act 2005</i> makes provision for jury trials in defamation actions.	34
	35
[3] Section 76B Defamation actions to be tried by jury unless Court orders otherwise	36
	37
Omit the section.	38

6.5 Government and Related Employees Appeal Tribunal Act 1980 No 39	1
	2
[1] Section 4 Definitions	3
Insert after section 4 (11):	4
(12) Notes included in this Act do not form part of this Act.	5
[2] Section 50	6
Omit the section. Insert instead:	7
50 Application of Defamation Act 2005 to proceedings of Tribunal	8
Section 27 of the <i>Defamation Act 2005</i> makes provision for a	9
defence of absolute privilege in respect of publications of	10
defamatory matter in the course of proceedings of the Tribunal.	11
Note. Section 27 (2) (b) of the <i>Defamation Act 2005</i> provides that the	12
defence of absolute privilege is available in respect of defamatory matter	13
that is published in the course of proceedings of an Australian court or	14
Australian tribunal, including (but not limited to) the following:	15
(a) the publication of matter in any document filed or lodged with, or	16
otherwise submitted to, the court or tribunal (including any	17
originating process),	18
(b) the publication of matter while giving evidence before the court or	19
tribunal,	20
(c) the publication of matter in any judgment, order or other	21
determination of the court or tribunal.	22
The term Australian tribunal is defined in section 4 of that Act to mean	23
any tribunal (other than a court) established by or under a law of an	24
Australian jurisdiction that has the power to take evidence from	25
witnesses before it on oath or affirmation (including a Royal Commission	26
or other special commission of inquiry).	27
The Government and Related Employees Appeal Tribunal is an	28
Australian tribunal for the purposes of the <i>Defamation Act 2005</i> because	29
it is a tribunal that has the power under this Act to take evidence from	30
witnesses under oath. See sections 37 (4) (c), 38 (1) and 45.	31
6.6 Guardianship Act 1987 No 257	32
Section 74	33
Omit the section. Insert instead:	34
74 Application of Defamation Act 2005 to proceedings of Tribunal	35
Section 27 of the <i>Defamation Act 2005</i> makes provision for a	36
defence of absolute privilege in respect of publications of	37
defamatory matter in the course of proceedings of the Tribunal.	38

Note. Section 27 (2) (b) of the *Defamation Act 2005* provides that the defence of absolute privilege is available in respect of defamatory matter that is published in the course of proceedings of an Australian court or Australian tribunal, including (but not limited to) the following:

- (a) the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal (including any originating process),
- (b) the publication of matter while giving evidence before the court or tribunal,
- (c) the publication of matter in any judgment, order or other determination of the court or tribunal.

The term **Australian tribunal** is defined in section 4 of that Act to mean any tribunal (other than a court) established by or under a law of an Australian jurisdiction that has the power to take evidence from witnesses before it on oath or affirmation (including a Royal Commission or other special commission of inquiry).

The Guardianship Tribunal is an Australian tribunal for the purposes of the *Defamation Act 2005* because it is a tribunal that has the power under section 60 (1) of this Act to take evidence from witnesses under oath.

6.7 Health Care Complaints Act 1993 No 105

Section 72 Confidentiality

Omit section 72 (11). Insert instead:

- (11) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

Note. The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

6.8 Independent Commission Against Corruption Act 1988	1
No 35	2
Section 70 Confidentiality	3
Omit section 70 (8). Insert instead:	4
(8) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the <i>Parliamentary Papers (Supplementary Provisions) Act 1975</i> apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.	5
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Note. The <i>Defamation Act 2005</i> makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.	11
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Section 28 of the <i>Defamation Act 2005</i> (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.	16
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Section 29 of the <i>Defamation Act 2005</i> (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.	19
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6.9 Legislation Review Act 1987 No 165	23
[1] Section 3 Definitions	24
Insert after section 3 (2):	25
(3) Notes included in this Act do not form part of this Act.	26
[2] Section 12 Confidentiality	27
Omit section 12 (8). Insert instead:	28
(8) If evidence taken by the Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the <i>Parliamentary Papers (Supplementary Provisions) Act 1975</i> apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.	29
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Note. The <i>Defamation Act 2005</i> makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.	35
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Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

6.10 Mental Health Act 1990 No 9

[1] Section 3A

Insert after section 3:

3A Notes

Notes included in this Act do not form part of this Act.

[2] Section 260

Omit the section. Insert instead:

260 Application of Defamation Act 2005 to proceedings of Tribunal

Section 27 of the *Defamation Act 2005* makes provision for a defence of absolute privilege in respect of publications of defamatory matter in the course of proceedings of the Tribunal.

Note. Section 27 (2) (b) of the *Defamation Act 2005* provides that the defence of absolute privilege is available in respect of defamatory matter that is published in the course of proceedings of an Australian court or Australian tribunal, including (but not limited to) the following:

- (a) the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal (including any originating process),
- (b) the publication of matter while giving evidence before the court or tribunal,
- (c) the publication of matter in any judgment, order or other determination of the court or tribunal.

The term **Australian tribunal** is defined in section 4 of that Act to mean any tribunal (other than a court) established by or under a law of an Australian jurisdiction that has the power to take evidence from witnesses before it on oath or affirmation (including a Royal Commission or other special commission of inquiry).

The Mental Health Review Tribunal is an Australian tribunal for the purposes of the *Defamation Act 2005* because it is a tribunal that has the power under section 277 of this Act to take evidence from witnesses under oath.

6.11 Notice of Action and Other Privileges Abolition Act 1977 No 19	1
	2
Section 5 Amendment of other Acts	3
Omit section 5 (4) (c). Insert instead:	4
(c) Division 1 of Part 3 of the <i>Defamation Act 2005</i> , or	5
6.12 Ombudsman Act 1974 No 68	6
[1] Section 5 Definitions	7
Insert after section 5 (4):	8
(5) Notes included in this Act do not form part of this Act.	9
[2] Section 31H Confidentiality	10
Omit section 31H (8). Insert instead:	11
(8) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the <i>Parliamentary Papers (Supplementary Provisions) Act 1975</i> apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.	12
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Note. The <i>Defamation Act 2005</i> makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.	18
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Section 28 of the <i>Defamation Act 2005</i> (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.	23
	24
	25
Section 29 of the <i>Defamation Act 2005</i> (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.	26
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6.13 Parliamentary Evidence Act 1901 No 43	30
[1] Section 3 Definitions	31
Insert at the end of the section:	32
(2) Notes included in this Act do not form part of this Act.	33

[2] Section 12 Privilege of witness	1
Insert at the end of the section:	2
(2) This section operates in addition to, and not in derogation of, any defence available to any such witness under the <i>Defamation Act 2005</i> for the publication of defamatory matter.	3
Note. For example, section 27 (2) (a) (iii) of the <i>Defamation Act 2005</i> provides that the publication of defamatory matter while giving evidence before a parliamentary body attracts the defence of absolute privilege in defamation proceedings. Section 4 of that Act defines a parliamentary body to include a parliament or legislature, a house of a parliament or legislature and committees of any such parliament, legislature or house.	4
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6.14 Parliamentary Papers (Supplementary Provisions) Act 1975 No 49	12
	13
[1] Section 3 Definitions	14
Insert at the end of the section:	15
(2) Notes included in this Act do not form part of this Act.	16
[2] Section 7 Proceedings for defamation	17
Insert at the end of the section:	18
Note. Section 27 (2) (a) of the <i>Defamation Act 2005</i> provides that the publication of defamatory matter in the course of proceedings of a parliamentary body attracts the defence of absolute privilege in defamation proceedings, including (but not limited to):	19
(a) the publication of a document by order, or under the authority, of the body, and	20
(b) the publication of the debates and proceedings of the body by or under the authority of the body or any law, and	21
(c) the publication of matter while giving evidence before the body, and	22
(d) the publication of matter while presenting or submitting a document to the body.	23
Section 4 of that Act defines a parliamentary body to include a parliament or legislature, a house of a parliament or legislature and committees of any such parliament, legislature or house.	24
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6.15 Public Finance and Audit Act 1983 No 152	34
Section 58 Evidence	35
Omit section 58 (9). Insert instead:	36
(9) If evidence taken by the Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the <i>Parliamentary Papers (Supplementary Provisions) Act 1975</i>	37
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apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

Note. The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

6.16 Special Commissions of Inquiry Act 1983 No 90

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 10 Reports

Omit section 10 (4). Insert at the end of the section:

Note. Any determinations made by a Commissioner that are contained in a report made to the Governor under this section attract the following defences under the specified provisions of the *Defamation Act 2005* in defamation proceedings:

- (a) the defence of absolute privilege (see section 27 (2) (b) and the definition of *Australian tribunal* in section 4 of that Act),
- (b) the defence for publication of public documents (see section 28 of, and clause 7 of Schedule 2 to, that Act),
- (c) the defences of fair report of proceedings of public concern (see section 29 and, in particular, section 29 (4) (f) of that Act).

6.17 Supreme Court Act 1970 No 52

[1] Section 85 Trial without jury unless jury required in interests of justice

Omit section 85 (6). Insert instead:

- (6) This section does not apply to proceedings in any Division for defamation.

Note. Section 21 of the *Defamation Act 2005* makes provision for jury trials in defamation proceedings.

[2] Section 86 Common law claim—defamation	1
Omit the section.	2
6.18 Transport Appeal Boards Act 1980 No 104	3
[1] Section 4 Definitions	4
Insert after section 4 (3):	5
(4) Notes included in this Act do not form part of this Act.	6
[2] Section 26	7
Omit the section. Insert instead:	8
26 Application of Defamation Act 2005 to proceedings of Board	9
Section 27 of the <i>Defamation Act 2005</i> makes provision for a	10
defence of absolute privilege in respect of publications of	11
defamatory matter in the course of proceedings of a Board.	12
Note. Section 27 (2) (b) of the <i>Defamation Act 2005</i> provides that the	13
defence of absolute privilege is available in respect of defamatory matter	14
that is published in the course of proceedings of an Australian court or	15
Australian tribunal, including (but not limited to) the following:	16
(a) the publication of matter in any document filed or lodged with, or	17
otherwise submitted to, the court or tribunal (including any	18
originating process),	19
(b) the publication of matter while giving evidence before the court or	20
tribunal,	21
(c) the publication of matter in any judgment, order or other	22
determination of the court or tribunal.	23
The term Australian tribunal is defined in section 4 of that Act to mean	24
any tribunal (other than a court) established by or under a law of an	25
Australian jurisdiction that has the power to take evidence from	26
witnesses before it on oath or affirmation (including a Royal Commission	27
or other special commission of inquiry).	28
A Transport Appeal Board is an Australian tribunal for the purposes of	29
the <i>Defamation Act 2005</i> because it is a tribunal that has the power	30
under this Act to take evidence from witnesses under oath. See sections	31
11C (4) (d), 11D (1) and 19.	32

6.19 Valuation of Land Act 1916 No 2**Section 92 Confidentiality**

Omit section 92 (10). Insert instead:

- (10) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

Note. The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

6.20 Victims Support and Rehabilitation Act 1996 No 115**Schedule 2 Provisions relating to Tribunal**

Omit clause 10. Insert instead:

10 Application of Defamation Act 2005 to proceedings of Tribunal

Section 27 of the *Defamation Act 2005* makes provision for a defence of absolute privilege in respect of publications of defamatory matter in the course of proceedings of the Tribunal.

Note. Section 27 (2) (b) of the *Defamation Act 2005* provides that the defence of absolute privilege is available in respect of defamatory matter that is published in the course of proceedings of an Australian court or Australian tribunal, including (but not limited to) the following:

- (a) the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal (including any originating process),
- (b) the publication of matter while giving evidence before the court or tribunal,
- (c) the publication of matter in any judgment, order or other determination of the court or tribunal.

The term ***Australian tribunal*** is defined in section 4 of that Act to mean any tribunal (other than a court) established by or under a law of an Australian jurisdiction that has the power to take evidence from witnesses before it on oath or affirmation (including a Royal Commission or other special commission of inquiry).

The Victims Compensation Tribunal is an Australian tribunal for the purposes of the *Defamation Act 2005* because it is a tribunal that has the power under clause 16 (1) (b) and (c) of this Schedule to take evidence from witnesses under oath.

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