



New South Wales

## Defamation Bill 1996

### Explanatory note

#### Overview of Bill

The object of this Bill is to re-enact the *Defamation Act 1974* with the amendments recommended by the New South Wales Law Reform Commission in its *Report on the Law of Defamation* (LRC 75, 1995) (“NSWLRC Report”). In particular, the Bill alters the law of defamation:

- (a) to require the falsity of a defamatory imputation to be proved in most cases to establish a cause of action for defamation, and
  - (b) to ensure that the defence of comment is only available if the defendant proves that the comment represents the opinion of its maker, and
  - (c) to provide a defence if a defendant publishes an adequate requested correction of a defamatory imputation, and
  - (d) to enable a plaintiff to seek a declaration from the Supreme Court that a defamatory imputation is false and to have that declaration published by the defendant, and
  - (e) to reorganise provisions in the present Act relating to absolute privilege, protected reports and official and public documents and records, and
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- (f) to extend the defence relating to protected reports to proceedings of local councils and other public authorities, and
- (g) to limit the penalty for the offence of criminal defamation to 200 penalty units (currently \$20,000) or 3 years imprisonment (or both) for individuals and 400 penalty units (currently \$40,000) in other cases, and
- (h) to enable the Director of Public Prosecutions to commence proceedings for criminal defamation, and
- (i) to extend existing protections relating to the use of incriminating answers in defamation proceedings to de facto spouses.

The Bill also amends the *Limitation Act 1969* to ensure that a limitation period of one year applies to defamation actions unless a court considers it appropriate to extend that period in a particular case. Consequential amendments are also made to various other Acts.

In other respects, the *Defamation Act 1974* ("the 1974 Act") is re-enacted without any substantive changes.

## Outline of provisions

### Part 1 Preliminary

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** provides that the proposed Act binds the Crown.

**Clause 5** provides that notes in the proposed Act do not form part of the proposed Act.

### Part 2 General principles

#### Division 1 Applicable law

**Clause 6** provides that the law of defamation is as provided at common law, subject to modifications made by the proposed Act or other relevant legislation.

## **Division 2 Causes of action**

This Division implements recommendations 5–8 and 10–12 of the NSWLRC Report.

**Clause 7** ensures that the circumstances that can give rise to a civil cause of action for defamation are limited. The publication of a defamatory imputation about a person will not, of itself, found an action for a remedy. Damages for non-economic loss will only be available if the plaintiff can prove that the defamatory imputation is false, inherently incapable of being proved true or false or does not relate to a matter of public interest (proposed section 7 (2)). A plaintiff seeking a declaration that an imputation is false will have to prove that the imputation is false (proposed section 54 (3)).

**Clause 8** provides that damages for both non-economic loss and a declaration of falsity will not generally be available as remedies in respect of the same defamatory imputation or in the same proceedings; they will usually be alternative remedies. An exception is provided for the institution of proceedings for damages for non-economic loss in cases where a defendant has previously failed to obey a publication order concerning a declaration of falsity (proposed section 8 (1) and (3)). However, it will be possible to combine a claim for damages for economic loss with an application for a declaration of falsity. The claim for economic loss will be determined in the same proceedings following the determination of the application for the declaration (proposed section 8 (3) (b)).

The clause also makes it clear that a person who has a cause of action for defamation will only be able to commence proceedings for a declaration of falsity if the imputation complained of is inherently capable of being proved true or false (clause 8 (1) (b)).

## **Division 3 Trial of defamation proceedings**

**Clause 9** continues the present law in the 1974 Act relating to the respective roles of judges and juries in defamation proceedings subject to changes suggested in recommendations 2–4 of the NSWLRC Report. In particular, it is made clear that in jury trials it is the jury's function to decide whether in fact the matter complained of was published by the defendant (clause 9 (3)) while it is the function of the judge to decide whether an imputation is false, is inherently incapable of being proved true or false or does not relate to a matter of public interest (clause 9 (4)).

**Clause 10** provides that the leave of the court is required for further proceedings in defamation in respect of the same matter to be brought against the same person.

**Clause 11** provides that rules of court may be made in relation to the pleading of substantially the same imputations.

**Clause 12** provides that a court is to assess damages in a single sum for all causes of action in a proceeding for defamation unless it considers that the interests of justice require otherwise.

**Clause 13** continues the present law in the 1974 Act under which slander (as well as libel) is actionable without having to prove special damage.

**Clause 14** provides that the powers of courts regarding vexatious proceedings and abuse of process are not affected.

### **Part 3 Defences in civil proceedings**

#### **Division 1 General**

**Clause 15** provides that the defences under proposed Part 3 are available in civil proceedings (proposed section 61 deals with the availability of the defences in criminal proceedings).

**Clause 16** states that the common law defences in defamation are to continue, except where the proposed Act expressly excludes them.

#### **Division 2 Truth defences**

**Clause 17** abolishes the defences of justification or truth at common law. At present, section 15 of the 1974 Act provides that the defence of truth is available only if it is proved that an imputation is true or substantially true and either relates to a matter of public interest or is published under qualified privilege. That defence is unnecessary in view of the elements that will now be needed to establish a cause of action (see proposed section 7 (2)). See recommendation 4 of the NSWLRC Report.

**Clause 18** generally continues the provisions of the 1974 Act concerning the defence of contextual truth except that it omits the present requirement of proof of the public interest of the defamatory imputation to which other imputations are contextual.

#### **Division 3 Absolute privilege**

**Clause 19** provides that the defence of absolute privilege is as provided in Schedule 1 to the proposed Act. The defences set out in Schedule 1 are essentially the same as those in the 1974 Act although the provisions relating to proceedings in Parliament are extended in the manner contemplated in the *Defamation Bill 1992*. See recommendations 31–33 of the NSWLRC Report.

#### **Division 4 Qualified privilege**

The Division deals with defences of qualified privilege, which are defences that can be defeated by proof of malice.

**Clause 20** continues the present provisions in the 1974 Act relating to the defence of qualified privilege in circumstances where the recipient of the defamatory matter has an interest or apparent interest in receiving certain information.

**Clause 21** provides that the defence of qualified privilege in the context of a multiple publication (for example, through the media) is not defeated for all purposes when it is defeated as regards some recipients of the publication. Additionally, the defence is available for all recipients of the publication if the extent of the publication is reasonable in the circumstances.

**Clause 22** continues the present defence in the 1974 Act of qualified privilege in circumstances where there was a mistake as to the identity or character of the recipient.

#### **Division 5 Protected reports and official and public documents**

**Clause 23** generally continues the present defence in the 1974 Act for the publication of a fair protected report of a kind listed in Schedule 2 to the proposed Act. The only substantive difference between the present position and the proposed Act is that the categories of protected reports are extended to proceedings of local councils and other public authorities (clause 7 of proposed Schedule 2). See recommendations 35 and 36 of the NSWLRC Report.

**Clause 24** continues the present defence in the 1974 Act for the publication of official and public documents or records of a kind mentioned in Schedule 3 to the proposed Act.

**Clause 25** continues the present provision in the 1974 Act under which a defence mentioned in this Division is defeated only if the publication was not made in good faith for public information or the advancement of education.

#### **Division 6 Court notices and official notices and reports**

**Clause 26** continues the present defence in the 1974 Act for publication of a notice in accordance with a direction of any court.

**Clause 27** continues the present defence in the 1974 Act for publication of a notice or report in accordance with an official request.

### **Division 7 Fair comment**

**Clause 28** provides that the defence of fair comment on a matter of public interest is as provided by the proposed Division.

**Clauses 29–34** generally continue the provisions of the 1974 Act regarding the defence of fair comment with the changes suggested in recommendation 9 of the NSWLRC Report. The provisions now ensure that if a defendant relies on the defence of comment, the defendant bears the onus of showing that the comment is the defendant's real opinion (in the case of a defence of comment under proposed section 31) or the real opinion of the defendant's agent or employee (in the case of a defence of comment under proposed section 32).

### **Division 8 Unlikelihood of harm**

**Clause 35** continues the present defence in the 1974 Act that matter was published in circumstances in which it was not likely that the person defamed would suffer harm.

### **Division 9 Offer of amends**

**Clauses 36–45** generally continue the present provisions in the 1974 Act relating to offers of amends subject to one change arising out of recommendation 29 of the NSWLRC Report. At present, section 43 (1) (d) of the 1974 Act provides that a defence is available to a person whose offer of amends concerns matter of which he or she was not the author only if it is proved that the actual author was not actuated by ill will to the offeree. That requirement is removed from proposed section 43, which in other respects substantially re-enacts section 43 of the 1974 Act.

## **Part 4 Requested corrections**

The proposed Part provides for a system of corrections requested by persons who allege that they have been defamed. The proposed Part gives effect to recommendations 22–28 of the NSWLRC Report.

**Clause 46** contains definitions of terms used in the proposed Part.

**Clause 47** ensures that a publisher of an actionable defamatory imputation is not liable to pay damages for non-economic loss resulting from its publication if an adequate requested correction is published and if the publisher has paid the complainant's reasonable costs to date. However, the publication of such a correction will not affect the liability of the publisher to pay damages for non-economic loss.

**Clause 48** provides for 2 alternative forms of adequate requested corrections for the purposes of the proposed Part. The first involves a correction published in response to a formal correction request made under proposed section 49 and that complies with certain detailed requirements laid down in proposed subsection (1). The second involves a correction that complies with a reasonable written request (other than a request under proposed section 49) from a complainant.

**Clause 49** sets out the requirements for formal correction requests by complainants for the purposes of the proposed Part.

**Clause 50** enables a relevant court, on the application of a publisher or a complainant, to make determinations as to the steps required for the publication of an adequate requested correction under the proposed Part.

## **Part 5 Damages**

**Clauses 51–53** generally continue the provisions of the 1974 Act regarding the amount of damages to be awarded in proceedings for defamation. However, the provisions of section 47 of the 1974 Act are not continued because they relate to the effect of the truth of a defamatory imputation on the assessment of damages. These provisions are unnecessary as a result of the requirement that generally there can be no action for defamation without proof of falsity. See recommendation 21 of the NSWLRC Report.

## **Part 6 Declarations of falsity**

The proposed Part enables a person who alleges that an actionable defamatory imputation has been made about the person to apply to the Supreme Court for a declaration that the imputation is false. The proposed Part gives effect to recommendations 10–20 of the NSWLRC Report.

**Clause 54** provides that the Supreme Court may make a declaration that an actionable defamatory imputation is false in certain circumstances. An action for such a declaration must be brought within 4 weeks of the publication of the imputation.

**Clause 55** ensures that only a defence of absolute privilege, protected report or court or official notice will defeat a claim for a declaration of falsity. In such cases, the trial judge may make a summary ruling on whether or not there is a triable issue in respect of any such defence. If there is a triable issue, it must be resolved in an action for damages and the application for a declaration of falsity refused.

**Clause 56** requires the court to assess a plaintiff's costs on an indemnity basis in successful proceedings for a declaration unless the interests of justice require otherwise.

**Clause 57** makes it clear that a plaintiff may seek a declaration of falsity and damages for economic loss only. Damages for non-economic loss are generally not available to a plaintiff who seeks or who has obtained a declaration of falsity. An exception is provided in cases where a defendant fails to comply with an order to publish a declaration of falsity.

**Clause 58** enables rules of court to be made concerning the form and content of declarations of falsity.

## **Part 7 Criminal defamation**

**Clauses 59–62** generally continue the provisions of the 1974 Act regarding criminal defamation, which is the statutory offence of publishing defamatory matter, without lawful excuse, about a living person, with intent to cause serious harm. However, proposed section 60 (which deals with the offence of criminal defamation) differs from section 50 of the 1974 Act in two important respects. Firstly, the penalty for the offence of criminal defamation is limited to 200 penalty units (currently \$20,000) or 3 years' imprisonment or both for individuals and 400 penalty units (currently \$40,000) in other cases. Under the 1974 Act, the fine for criminal defamation is left in the discretion of the court. Secondly, the Director of Public Prosecutions is to authorise the commencement of proceedings for criminal defamation instead of the Attorney General.

## **Part 8 Miscellaneous**

**Clauses 63–67** generally continue various machinery provisions of the 1974 Act. One important departure from the 1974 Act is that proposed section 64 (unlike section 56 of the 1974 Act) extends certain protections relating to the use of incriminating answers in defamation proceedings to de facto spouses.

**Clause 68** provides that the offence of criminal defamation is an indictable offence, but applies Part 9A of the *Criminal Procedure Act 1986* to ensure that it is to be tried summarily unless the prosecution or the accused elects to have the matter tried on indictment.

**Clause 69** enables rules of court to be made for the purposes of the proposed Act.



**Clause 70** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 71** repeals the 1974 Act.

**Clause 72** is a machinery provision giving effect to the Schedule of amendments to the *Limitation Act 1969*.

**Clause 73** is a machinery provision giving effect to the Schedule of amendments to various other Acts.

**Clause 74** is a machinery provision giving effect to the Schedule containing provisions of a savings and transitional nature.

**Clause 75** provides for the Minister to review, and report to Parliament on, the operation of the proposed Act within 12 months of the fifth anniversary of the date on which it receives assent.

## Schedules

**Schedule 1** lists the matters for which there is a defence of absolute privilege.

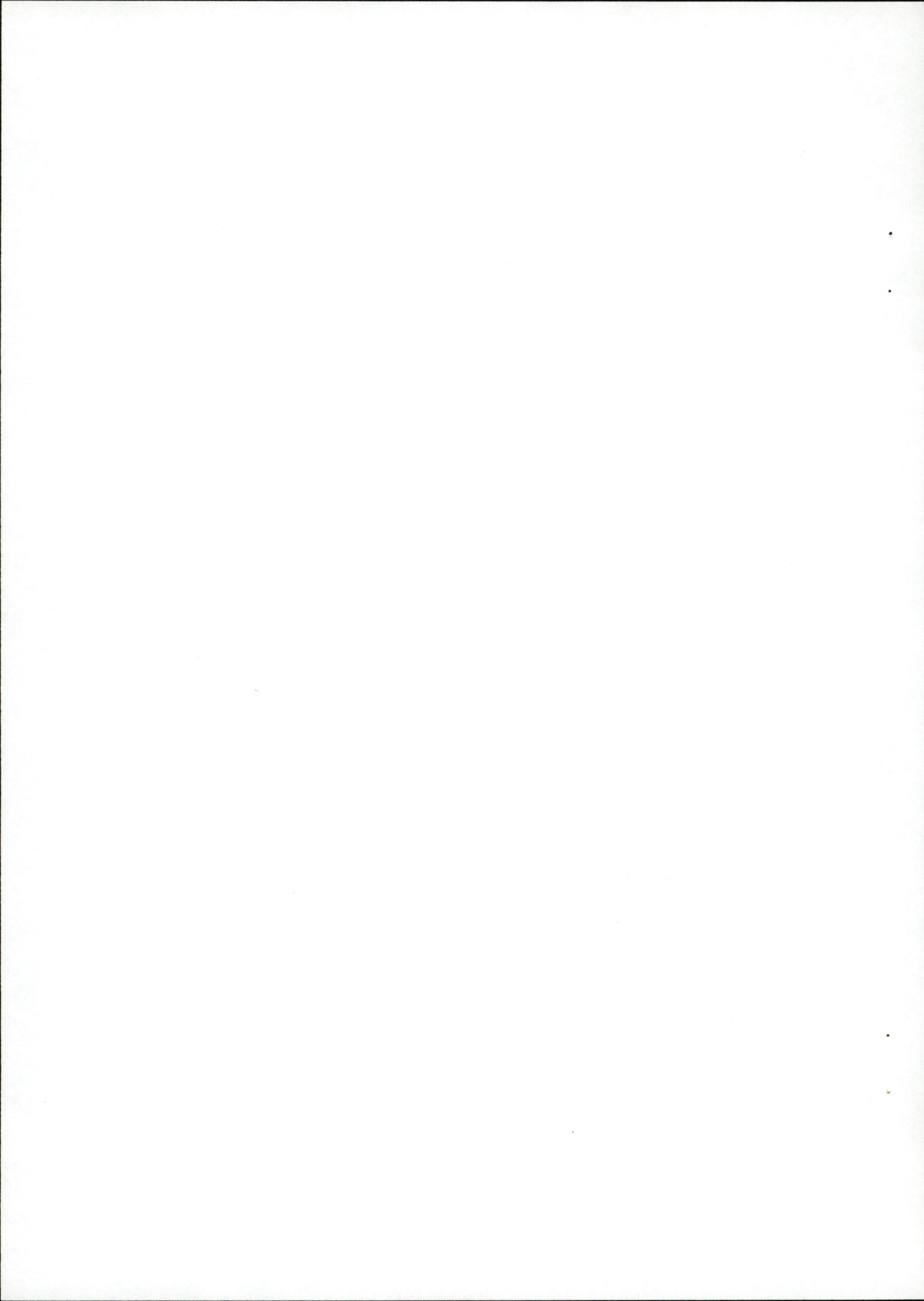
**Schedule 2** lists the proceedings in relation to which there is a defence for the publication of reports.

**Schedule 3** lists the official and public documents and reports for which there is a defence of publication of a copy or fair extract.

**Schedule 4** amends the *Limitation Act 1969* to ensure that the limitation period for defamation actions generally is shortened to one year from the date of publication of defamatory matter, with the court having a discretion to extend the period in exceptional circumstances. However, a court will not be able to grant an extension beyond 3 years dating from the time of the publication of the defamatory matter. See recommendation 37 of the NSWLRC Report.

**Schedule 5** makes consequential amendments to various other Acts.

**Schedule 6** contains provisions of a savings and transitional nature.





New South Wales

# Defamation Bill 1996

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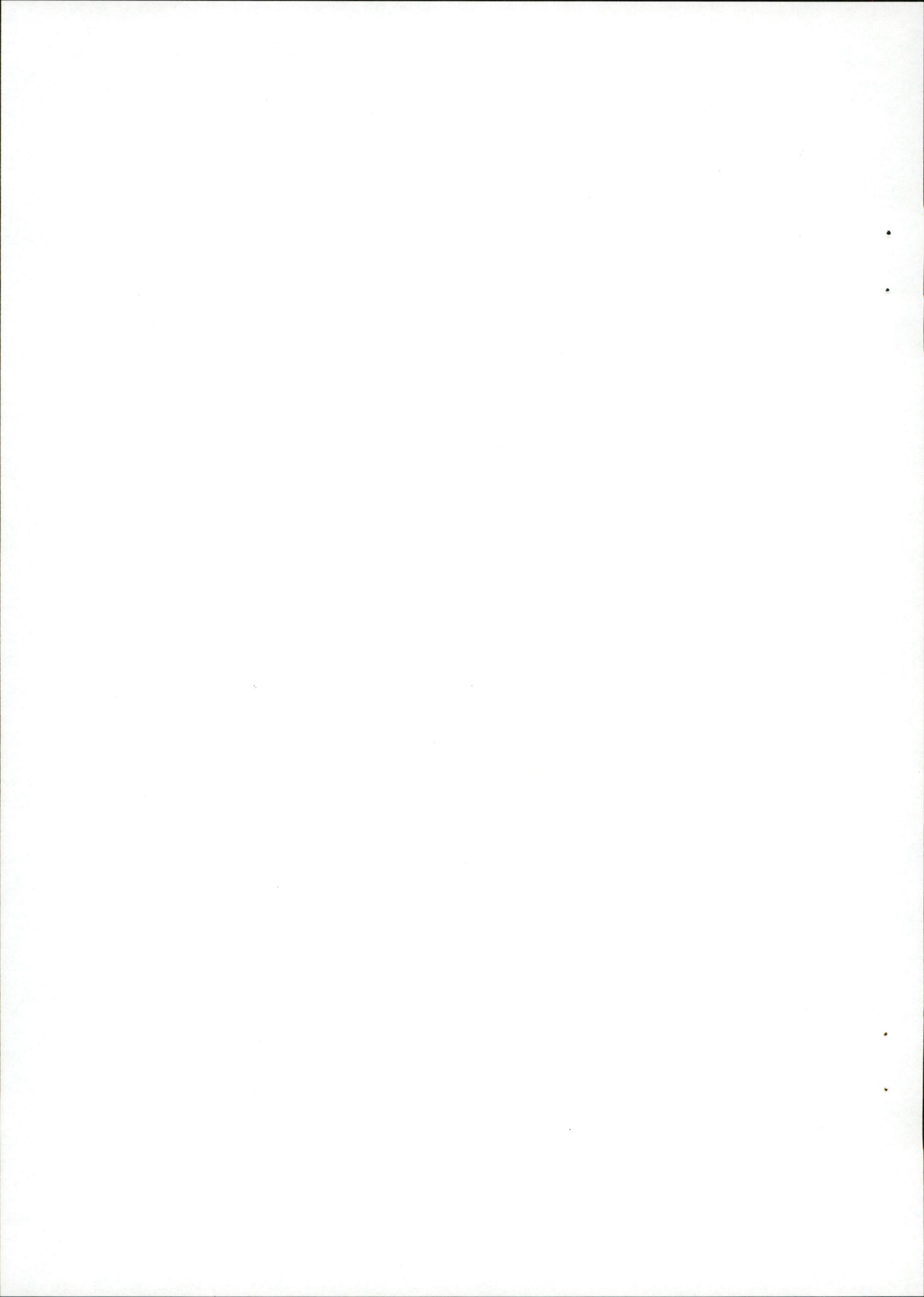
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New South Wales

## Defamation Bill 1996

No . . . , 1996

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### **A Bill for**

An Act to make provision for the law of defamation; to repeal the *Defamation Act 1974*; to amend the *Limitation Act 1969* to provide for a one year limitation period for defamation actions; to amend consequentially various other Acts; and for other purposes.

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Clause 1 Defamation Bill 1996

Part 1 Preliminary

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

**Introduction.** This Part contains provisions that assist in understanding the Act as a whole, as well as some machinery provisions.

- 1 Name of Act** 5
- This Act is the *Defamation Act 1996*.
- 2 Commencement**
- This Act commences on a day or days to be appointed by proclamation.
- 3 Definitions** (cf 1974 Act s 7) 10
- In this Act:
- actionable defamatory imputation*—see section 7 (2).
- authorised printer* means a person authorised by or on behalf of the Government to print any Act or instrument or other document. 15
- country* includes:
- (a) a federation and a state, province or other part of a federation, and
- (b) a territory governed under a trusteeship agreement.
- declaration of falsity* means a declaration by the Supreme Court under section 54 that an actionable defamatory imputation is false. 20
- parliamentary body* means:
- (a) a parliament or legislature of any country, and
- (b) a house of a parliament of any country, and 25
- (c) a committee of a parliament or legislature of any country, and
- (d) a committee of a house or houses of a parliament or legislature of any country.

*substantially true* means true in substance or not materially different from the truth.

*Territory of the Commonwealth* includes a territory governed by the Commonwealth under a trusteeship agreement.

**4 Act binds Crown** (cf 1974 Act s 6)

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This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**5 Notes in text**

Introductions to Parts and other notes included in this Act do not form part of this Act.

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**Note.** For the purposes of comparison, a number of provisions contain bracketed notes in headings, drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions of the *Defamation Act 1974* (the "1974 Act").

15

## Part 2 General principles

**Introduction.** This Part provides for the elements necessary to establish a cause of action for defamation and for other evidentiary matters relating to civil proceedings for defamation.

The Part provides that generally, a person will have a cause of action for defamation only if the person proves that an actionable defamatory imputation has been published about that person. An actionable defamatory imputation is an imputation that is: (1) defamatory, and (2) false, inherently incapable of being proved true or false or not related to a matter of public interest. 5

A person seeking a remedy for a cause of action for defamation must elect to commence either proceedings for damages for non-economic loss or proceedings for a declaration of falsity. However, proceedings for a declaration of falsity will be available only in respect of imputations that are inherently capable of being proved true or false. Proceedings for a declaration can be combined with a claim for damages for economic loss, but not a claim for non-economic loss. 10

If damages are sought in civil proceedings for defamation and the proceedings are tried before a jury, the function of the jury is limited to determining whether an imputation was published by the defendant and whether that imputation is defamatory of the plaintiff. The court determines all other issues, including the amount of damages (if any) and any question of falsity. Issues arising in proceedings for a declaration of falsity are determined by the court alone. 15

The Part also makes clear that the common law of defamation applies except to the extent that it is modified by legislation. 20

### Division 1 Applicable law

#### 6 Statutorily modified common law applies (cf 1974 Act s 4) 25

- (1) The law relating to defamation is as provided at common law, as modified by this Act and any other legislation as in force on or after the commencement of this Part.
- (2) In addition, and without limiting subsection (1), the law relating to defamation is as if the *Defamation Act 1958* and the *Defamation Act 1974* had not been enacted. 30

### Division 2 Causes of action

#### 7 When cause of action exists (cf 1974 Act ss 9 (1) and (2))

- (1) A person has a cause of action for defamation against another person (*the publisher*) if and only if the person proves that an actionable defamatory imputation concerning the person has been made by the publisher. 35

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- (2) An *actionable defamatory imputation* is an imputation made by a person (whether by innuendo or otherwise) concerning another person by publishing the whole or any part of any matter (being a report, article, letter, note, picture, oral utterance or other thing):
- (a) that is defamatory of the person concerning whom it is made, and 5
- (b) that:
- (i) is false, or
- (ii) is inherently not capable of being proved true or false, or 10
- (iii) does not relate to a matter of public interest.
- (3) A person has such a cause of action for defamation for any of the following:
- (a) each publication of matter by which an actionable defamatory imputation is made, 15
- (b) each actionable defamatory imputation that is made by means of the publication of the same matter.

### 8 Election between remedies

- (1) A person who has a cause of action for defamation may elect:
- (a) to commence proceedings to recover damages for non-economic loss or economic loss, or for both, or 20
- (b) to commence proceedings for a declaration of falsity, but only if the imputation complained of is inherently capable of being proved true or false.
- (2) If a person elects to bring proceedings for the award of one of the remedies referred to in subsection (1), the determination of the proceedings for that remedy precludes the bringing of proceedings for, or the award of, the other remedy. 25
- (3) However, nothing in this Part:
- (a) prevents a person who has obtained a declaration of falsity against a defendant from subsequently commencing proceedings to recover (or from being awarded) damages for non-economic loss in respect of the imputation for which the declaration was made if the defendant fails to comply with an order to publish the declaration, or 30
- 35

- (b) prevents a person who has obtained a declaration of falsity from recovering in those same proceedings damages for economic loss in respect of the same imputation for which the declaration was made, or
- (c) enables a person to commence proceedings seeking both: 5
  - (i) damages for non-economic loss for any imputation, and
  - (ii) a declaration of falsity in respect of that, or any other, imputation (however made).

### **Division 3 Trial of defamation proceedings** 10

#### **9 Functions of judge and jury** (cf 1974 Act s 7A)

- (1) If proceedings for defamation are tried before a jury, the court and not the jury is to determine whether the matter complained of is reasonably capable of carrying the imputation pleaded by the plaintiff and, if it is, whether the imputation is reasonably capable of bearing a defamatory meaning. 15
- (2) If the court determines that:
  - (a) the matter is not reasonably capable of carrying the imputation pleaded by the plaintiff, or
  - (b) the imputation is not reasonably capable of bearing a defamatory meaning, 20the court is to enter a verdict for the defendant in relation to the imputation pleaded.
- (3) If the court determines that:
  - (a) the matter is reasonably capable of carrying the imputation pleaded by the plaintiff, and 25
  - (b) the imputation is reasonably capable of bearing a defamatory meaning,the jury is to determine whether the matter complained of was published by the defendant and, if so, whether the matter carries the imputation. If the jury determines that the defendant published matter carrying the imputation, the jury is then to determine whether the imputation is defamatory. 30

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- (4) If the jury determines that the matter complained of was published by the defendant and carries an imputation that is defamatory of the plaintiff, the court and not the jury:
- (a) is to determine whether or not the imputation:
    - (i) is false, or 5
    - (ii) is inherently not capable of being proved true or false, or
    - (iii) does not relate to a matter of public interest, and
  - (b) is to determine whether any defence raised by the defendant (including all issues of fact and law relating to that defence) has been established, and 10
  - (c) 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.
- (5) To the extent that section 88 of the *Supreme Court Act 1970* applies to proceedings for defamation, it applies subject to the provisions of this section. 15
- (6) Subsections (1)–(5) do not apply to proceedings for defamation in which a declaration of falsity is sought (whether or not combined with a claim for economic loss). The court and not the jury is to determine all issues of fact or law relevant to the resolution of such proceedings. 20
- 10 Leave required to institute certain proceedings** (cf 1974 Act s 9 (3))
- If a person has brought defamation proceedings (whether in New South Wales or elsewhere) against any person in respect of the publication of any matter, the person may not bring further defamation proceedings against the same defendant in respect of 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. 25 30
- 11 Rules of court concerning imputations** (cf 1974 Act s 9 (4))
- Rules of court may prohibit or regulate the reliance by a plaintiff in defamation proceedings on several imputations alleged to have been made by means of the same matter published by the defendant, where the several imputations do not differ in substance. 35

Clause 12      Defamation Bill 1996

Part 2          General principles  
Division 3

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**12 Awards of damages by court** (cf 1974 Act s 9 (5A))

If the court or the jury (if any) finds for the plaintiff as to more than one cause of action in the same proceedings for defamation, the court must assess damages in a single sum in respect of all causes of action in respect of which the plaintiff succeeds unless the court considers the interests of justice require otherwise. 5

**13 Slander actionable without special damage** (cf 1974 Act s 8)

Slander is actionable without special damage in the same way and to the same extent as libel is actionable without special damage. 10

**14 Application of this Division** (cf 1974 Act s 9 (6))

This Division does not affect the powers of any court in respect of vexatious proceedings or abuse of process.



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## Part 3 Defences in civil proceedings

**Introduction.** This Part provides for a number of defences in civil proceedings for defamation.

In particular, the Part provides for the following defences:

- a defence of contextual truth 5
- a defence of absolute privilege
- a defence of qualified privilege
- defences relating to protected reports and official and public documents
- defences relating to court notices and official notices and reports
- a defence of fair comment 10
- a defence based on the unlikelihood of harm to the plaintiff
- a defence relating to the rejection of an offer of amends

The Part also makes it clear that common law defences continue to be available unless expressly modified by this Act.

### Division 1 General 15

#### 15 Application of Part (cf 1974 Act s 10)

- (1) This Part deals with defences in civil proceedings for defamation, but not with defences in other proceedings.
- (2) Section 61 deals with the availability of defences in criminal proceedings for defamation. 20
- (3) However, this section is subject to any express provisions of this Act limiting the application of a defence in a civil proceeding.

#### 16 Common law defences (cf 1974 Act s 11)

- (1) The provision of a defence by this Part does not of itself diminish or abolish any defence or exclusion of liability available apart from this Act. 25

- (2) However, subsection (1) has effect subject to any express provisions of this Act.

**Note.** For example, sections 17 (Abolition of common law justification or truth defences) and 28 (Availability of defence of fair comment) replace the common law altogether.

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## Division 2 Truth defences

### 17 Abolition of common law justification or truth defences (cf 1974 Act s 15)

Any defence of justification or truth at common law is abolished.

### 18 Defence of contextual truth (cf 1974 Act ss 14 and 16)

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- (1) There is a defence of contextual truth as to the publication of matter carrying any actionable defamatory imputation if the defendant establishes that:

- (a) the matter also carried one or more other imputations (*contextual imputations*) that are substantially true, and
- (b) one or more of the contextual imputations relate to a matter of public interest or are published on an occasion of qualified privilege, and
- (c) the actionable defamatory imputation does not further injure the reputation of the plaintiff because of the substantial truth of the contextual imputation or imputations.

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- (2) For the purposes of this section, an imputation is *published on an occasion of qualified privilege* only if:

- (a) it is published in, and it is relevant to, circumstances attracting the defence of qualified privilege at common law or under this Part, and

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- (b) the manner of its publication is reasonable having regard to the imputation and the circumstances attracting the defence of qualified privilege.

### **Division 3 Absolute privilege**

#### **19 Defence of absolute privilege** (cf 1974 Act ss 17-19)

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There is a defence of absolute privilege as provided by Schedule 1.

### **Division 4 Qualified privilege**

#### **20 Information** (cf 1974 Act s 22)

- (1) There is a defence of qualified privilege for a publication, if in respect of the matter published: 10
  - (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 15
  - (c) the conduct of the publisher in publishing that matter is reasonable in the circumstances.
- (2) A person has an apparent interest in having information on some subject only if, at the time of the publication in question, the publisher believes on reasonable grounds that the person has that interest. 20
- (3) If matter is published for reward in circumstances in which there would be a qualified privilege under subsection (1) for the publication if it were not for reward, there is a defence of qualified privilege for that publication even though it is for reward. 25

**21 Multiple publication** (cf 1974 Act s 20)

- (1) If:
- (a) a person makes a multiple publication, and
  - (b) the matter published would if published to one or more, but not all, of the recipients be published on an occasion of qualified privilege as regards that recipient or those recipients, 5
- there is a defence of qualified privilege for the publication to that recipient or those recipients, even though the publication is not made on an occasion of qualified privilege as regards any other recipient. 10
- (2) However, if the extent of publication is reasonable having regard to the matter published and to the occasion of qualified privilege, there is a defence of qualified privilege as regards all of the recipients. 15
- (3) In this section:
- multiple publication** means publication of the same or like matter or of copies of any matter to 2 or more recipients:
- (a) at the same time, or
  - (b) by means of the publication in the ordinary course of affairs of numerous copies of a newspaper or other writing, or 20
  - (c) otherwise in the course of one transaction.
- published on an occasion of qualified privilege** means:
- (a) published in, and relevant to, circumstances attracting the defence of qualified privilege at common law or under section 20 or 22, and 25
  - (b) published in a manner that is reasonable having regard to the imputation and the circumstances attracting the defence of qualified privilege. 30

**22 Mistaken character of recipient** (cf 1974 Act s 21)

There is a defence of qualified privilege for a publication, if:

- (a) the publication is made in the course of a communication by the publisher to any person, and

- (b) the publication is made in the circumstances in which there would be a defence of qualified privilege for that publication if that person bore some character, and
- (c) the publisher believes, at the time of the communication, on reasonable grounds, that that person bears that character. 5

### Division 5 Protected reports and official and public documents

#### 23 Protected reports (cf 1974 Act s 24)

- (1) In this section, *protected report* means a report of proceedings specified in Schedule 2. 10
- (2) There is a defence for the publication of a fair protected report.
- (3) If a protected report is published by a person, there is a defence for a later publication by another person of the protected report or a copy of the protected report (or a fair extract or fair abstract from, or fair summary of, the protected report) if the other person does not, at the time of the later publication, have knowledge that should make him or her aware that the protected report is not fair. 15
- (4) If material purporting to be a protected report is published by a person, there is a defence for a later publication by another person of the material or a copy of the material (or a fair extract or fair abstract from, or fair summary of, the material) if the other person does not, at the time of the later publication, have knowledge that should make him or her aware that the material is not a protected report or is not fair. 20  
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#### 24 Official and public documents and records (cf 1974 Act s 25)

There is a defence for the publication of:

- (a) a document or record of a kind specified in Schedule 3 or a copy of such a document or record, and
- (b) a fair extract or fair abstract from, or fair summary of, any such document or record. 30

**25 Defeat of defence under section 23 or 24** (cf 1974 Act s 26)

If a defence is established under section 23 or 24, the defence is defeated only if it is shown that the publication complained of was not in good faith for public information or the advancement of education.

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**Division 6 Court notices and official notices and reports**

**26 Court notices** (cf 1974 Act s 27)

- (1) There is a defence for the publication of a notice in accordance with the direction of a court of any country.
- (2) If a defence is established under subsection (1), the defence is defeated only if it is shown that the publication complained of was not in good faith for the purpose of giving effect to the direction.

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**27 Official notices and reports** (cf 1974 Act s 28)

- (1) There is a defence for the publication of any notice or report in accordance with an official request. 15
- (2) If a defence is established under subsection (1), the defence is defeated only if it is shown that the publication complained of was not in good faith for the purpose of giving effect to the request. 20
- (3) If there is an official request that any notice or report be published to the public generally or to any section of the public, and the notice or report is or relates to a matter of public interest, there is a defence for a publication of:
  - (a) the notice or report, or a fair extract or fair abstract from the notice or report, or 25
  - (b) a fair report or summary of the notice or report.
- (4) If a defence is established under subsection (3), the defence is defeated only if it is shown that the publication complained of was not in good faith for the information of the public. 30
- (5) This section does not affect the liability (if any) in defamation of a person making an official request.

- (6) In this section, *official request* means a request by:
- (a) an officer of the government (including a member of a police force) of any Australian State, or of the Commonwealth, or of any Territory of the Commonwealth, or
  - (b) a council, board or other authority or person constituted or appointed for public purposes under the legislation of any Australian State, or of the Commonwealth, or of any Territory of the Commonwealth.

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## Division 7 Fair comment

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### 28 Availability of defence of fair comment (cf 1974 Act s 29)

The defence or exclusion of liability in cases of fair comment on a matter of public interest:

- (a) is modified as appears in this Division, and
- (b) is not available except in accordance with this Division.

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### 29 Proper material (cf 1974 Act s 30)

- (1) In this section, but subject to subsection (2), *proper material for comment* means material that, if this Division had not been enacted, would (because it consists of statements of fact, or because it is a protected report within the meaning of section 23, or for some other reason) be material on which comment might be based for the purpose of the defence or exclusion of liability in cases of fair comment on a matter of public interest.
- (2) A statement of fact that is substantially true is proper material for comment for the purposes of this section, whether or not the statement relates to a matter of public interest.
- (3) The defences under this Division are available as to any comment only if:
  - (a) the comment is based on proper material for comment, or
  - (b) the material on which the comment is based is to some extent proper material for comment and the comment represents an opinion that might reasonably be based on that material to the extent to which it is proper material for comment.

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Clause 29      Defamation Bill 1996

Part 3            Defences in civil proceedings  
Division 7

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- (4) There is no special rule governing the nature of the material that may be the basis of comment imputing a dishonourable motive or governing the degree of foundation or justification that comment imputing a dishonourable motive must have in the material on which the comment is based. 5

**30 Public interest** (cf 1974 Act s 31)

The defences under this Division are not available as to any comment unless the comment relates to a matter of public interest.

**31 Comment of defendant** (cf 1974 Act s 32) 10

Subject to sections 29 and 30, it is a defence as to comment that the comment is the comment of the defendant, but only if the defendant establishes that the comment represents the defendant's opinion.

**32 Comment of employee or agent of defendant** (cf 1974 Act s 33) 15

Subject to sections 29 and 30, it is a defence as to comment that the comment is the comment of an employee or agent of the defendant, but only if the defendant establishes that the comment represents the opinion of the employee or agent.

**33 Comment of stranger** (cf 1974 Act s 34) 20

- (1) Subject to sections 29 and 30, it is a defence as to comment that the comment is not, and in its context and in the circumstances of the publication complained of did not purport to be, the comment of the defendant or of any employee or agent of the defendant.
- (2) A defence under subsection (1) is defeated only if it is shown that the publication complained of was not in good faith for public information or the advancement of education. 25



**34 Effect of defence** (cf 1974 Act s 35)

If the matter complained of includes comment and includes material on which the comment is based, a defence under this Division as to the comment is not a defence as to the material on which the comment is based.

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**Division 8 Unlikelihood of harm**

**35 Defence of unlikelihood of harm** (cf 1974 Act s 13)

It is a defence that the circumstances of the publication of the matter complained of were such that the person defamed was not likely to suffer harm.

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**Division 9 Offer of amends**

**36 Innocent publication: meaning** (cf 1974 Act s 36)

(1) For the purposes of this Division, if any matter is published by any person that carries or may carry an actionable defamatory imputation about another person, the publication is *innocent* in relation to that other person only if, at and before the time of publication, each of the involved persons:

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(a) exercises reasonable care in relation to the matter in question and its publication, and

(b) does not intend the matter in question to be defamatory of that person, and

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(c) does not know of circumstances by reason of which the matter in question is or may be defamatory of that person.

(2) In this section, the *involved persons* are the publisher and the publisher's employees and agents concerned with the matter in question or with its publication.

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**37 Offer of amends** (cf 1974 Act s 37)

- (1) The publisher of any matter that carries or may carry an actionable defamatory imputation about another person may make an offer of amends under this Division if the publisher claims that the publication of that matter is innocent in relation to that other person. 5
- (2) An offer of amends:
- (a) must be expressed to be so made, and
  - (b) must include an offer to publish, or join in publishing, such correction (if any) of the matter in question as is reasonable, and 10
  - (c) must include an offer to publish, or join in publishing, such apology (if any) to the offeree as is reasonable, and
  - (d) if material containing the matter in question has been delivered to any person by the publisher or with the publisher's knowledge—must include an offer to take, or join in taking, such steps (if any) as are reasonable for the purpose of notifying the recipient that the matter in question is or may be defamatory of the offeree. 15
- (3) In determining whether any, and if so, what correction, apology or steps are reasonable for the purposes of subsection (2), regard is to be had to any correction or apology published, or steps taken, by the publisher or any other person at any time before the occasion for determination arises. 20

**38 Particulars in support of offer** (cf 1974 Act s 38) 25

- (1) An offer of amends made under this Division must be accompanied by:
- (a) particulars of the facts on which the publisher relies to show that the publication of the matter in question is innocent in relation to the offeree, and 30
  - (b) particulars of any correction or apology made or steps taken, before the date of the offer, on which the publisher relies for the purposes of section 37 (3), and
  - (c) a statutory declaration verifying the particulars mentioned in paragraphs (a) and (b). 35

- (2) The statutory declaration must be made:
- (a) by the publisher, or
  - (b) if the publisher is a corporation aggregate—by an officer of the corporation having knowledge of the facts, or
  - (c) if, on facts appearing in the statutory declaration, it is impracticable to comply with paragraph (a) or (b)—by a person authorised by the publisher and having knowledge of the facts. 5

**39 Determination of questions** (cf 1974 Act s 39)

- (1) If an offer of amends made under this Division is accepted, the court may, on application by a party to the offer, determine any question as to the steps to be taken in performance of the agreement arising by acceptance of the offer. 10
- (2) An appeal does not lie from a determination under this section.

**40 Effect of acceptance and performance** (cf 1974 Act s 40) 15

If an offer of amends made under this Division is accepted and the agreement arising by acceptance of the offer is performed, the offeree must not commence or continue any proceedings against the offeror for damages for defamation in respect of the matter in question. 20

**41 Costs and expenses** (cf 1974 Act s 41)

If an offer of amends made under this Division is accepted, the court may make an order for payment by the offeror to the offeree of:

- (a) the costs of the offeree of and incidental to the acceptance and of the offer and the performance of the agreement arising by acceptance of the offer, including costs on an indemnity basis, and 25
- (b) the expenses of the offeree incurred because of the publication of the matter in question. 30

**42 Courts with powers under sections 39 and 41** (cf 1974 Act s 42)

The powers given by section 39 or 41 to a court are exercisable:

- (a) if the offeree has brought proceedings against the offeror in any court for damages for defamation in respect of the matter in question—by that court in those proceedings, and 5
- (b) in any other case—by the Supreme Court.

**43 Offer not accepted** (cf 1974 Act s 43)

- (1) If an offer of amends is made under this Division and the offeree does not accept the offer, it is a defence to proceedings by the offeree against the offeror for damages for defamation in respect of the matter in question that: 10
  - (a) the publication by the offeror of the matter in question was innocent in relation to the offeree, and
  - (b) the offeror made the offer as soon as practicable after becoming aware that the matter in question is or may be defamatory of the offeree, and 15
  - (c) the offeror is ready and willing to perform an agreement arising from the offeree's acceptance, at any time before the commencement of the trial on issues in relation to a defence under this section, of an offer made under this Division. 20
- (2) For the purposes of a defence under this section, evidence of facts other than facts of which particulars are given under section 38 is not admissible on behalf of the offeror, except with the leave of the court, to prove that the publication by the offeror of the matter in question is innocent in relation to the offeree. 25

**44 Other publishers** (cf 1974 Act s 44)

- (1) If there are two or more publishers, whether joint or otherwise, of any matter, and one or more (but not all of them) make an offer of amends under this Division, this Division does not, because of that offer, affect the liability of the other or others of them. 30
- (2) Subsection (1) does not affect the admissibility in mitigation of damages of any correction, apology or other thing.

**45 Limited effect of agreement** (cf 1974 Act s 45)

An agreement arising by the acceptance of an offer of amends made under this Division does not have any effect in law except as specified in this Division and except so far as a contrary intention appears by the agreement.

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## Part 4 Requested corrections

**Introduction.** This Part provides for a system under which corrections may be requested by a person (the "complainant") who alleges that he or she has been defamed by the publication of a matter by another person (the "publisher").

A publisher who publishes an adequate requested correction and has paid the complainant's reasonable costs to date is not liable to pay damages for non-economic loss, but is still liable to pay damages for economic loss. An adequate requested correction may be published in response to a formal correction request as provided in the Part or in response to a reasonable request by the complainant. 5  
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The Part also enables the court to be involved where there is a dispute as to what steps are required to comply with the Part.

### 46 Definitions

In this Part:

***complainant*** means the person who alleges that the publication of matter carries an actionable defamatory imputation about the person. 15

***formal correction request*** means a correction request by a complainant that complies with section 49.

***medium*** means a newspaper, magazine, television program, radio program or other method of communication. 20

***offending matter*** means the matter that is alleged to carry the actionable defamatory imputation complained of.

***publisher*** means the person who publishes the offending matter.

### 47 Effect on damages assessment of publication of requested correction under this Part 25

- (1) A publisher of offending matter who:
- (a) has published an adequate requested correction in accordance with this Part in relation to that matter, and
  - (b) has paid the reasonable costs of the complainant up to the date on which the correction is published, 30

is not liable to pay damages to the complainant for non-economic loss resulting from the publication of the offending matter.

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- (2) However, nothing in this section prevents a complainant from recovering from the publisher damages for economic loss resulting from the publication of the offending matter.

#### 48 Adequate requested corrections

- (1) An adequate requested correction is published in accordance with this Part if the publisher causes a correction to be published that:
- (a) is published in the terms proposed by a formal correction request, and
  - (b) is published in the same medium and in a similar place within that medium as the offending matter was originally published or is published in a medium that is calculated to reach substantially the same audience as that original publication, and
  - (c) unequivocally asserts that the imputation complained of in the correction request is false and, where reasonably possible, states the true state of affairs, and
  - (d) in the case of any imputation alleged to carry a defamatory meaning by reason of the existence of any extrinsic fact or circumstance—asserts that the publication of the offending matter was not intended to convey that imputation, and
  - (e) in the case of offending matter published in an edition of a medium produced on 5 or more days in any one week—is published by a date that:
    - (i) is within 7 days of receipt of a formal correction request, or
    - (ii) is agreed between the publisher and the complainant, and
  - (f) in a case to which paragraph (e) does not apply—is published by a date that:
    - (i) is requested by the complainant in a formal correction request, or
    - (ii) is agreed between the publisher and the complainant, or
    - (iii) is reasonable in all the circumstances.

- (2) Alternatively, an adequate requested correction is published in accordance with this Part if the publisher causes a correction to be published that complies with a reasonable request by the complainant for a correction.

**49 Formal correction requests by complainants** 5

A complainant makes a formal correction request if the request:

- (a) is made in writing and is served on the publisher before the commencement of any proceedings for defamation in respect of the offending matter, and
- (b) identifies the medium in which the offending matter was published, and 10
- (c) specifies any defamatory imputation alleged to have been carried by the publication of the offending matter, and
- (d) specifies any facts that demonstrate the falsity of that imputation, and 15
- (e) in the case of any imputation alleged to carry a defamatory meaning by reason of the existence of any extrinsic fact or circumstance—specifies any such fact or circumstance, and
- (f) proposes the terms of, and time for, the publication of a correction that are reasonable in all the circumstances. 20

**50 Determination of steps to be taken under this Part**

- (1) If a publisher agrees to publish an adequate requested correction under this Part, the publisher or the complainant may apply to a relevant court for the determination of any question concerning the steps to be taken to comply with the provisions of this Part. 25
- (2) On any such application, the court may:
  - (a) make or refuse to make a determination on any question concerning any step to be taken to comply with the provisions of this Part, and 30
  - (b) make such orders as to costs as appear to it just in the circumstances.
- (3) Any such determination or order as to costs may be made by the court regardless of whether or not other proceedings in respect of the publication of the offending matter have been commenced. 35



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- (4) An appeal does not lie in respect of a determination made under subsection (2).
- (5) For the purposes of this section, *relevant court* means:
- (a) if the complainant has brought proceedings against the publisher for damages for non-economic loss in respect of the offending matter—the court in those proceedings, and
  - (b) in any other case—a court that would have jurisdiction to determine proceedings for damages for non-economic loss brought in respect of the publication of the offending matter.

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## Part 5 Damages

**Introduction.** This Part provides for the kinds of harm that may be compensated by an award of damages for defamation. It also provides for the factors and evidence that a court can take into account in assessing damages.

### 51 General (cf 1974 Act s 46)

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(1) In this Part, *relevant harm* means, in relation to damages for defamation:

(a) harm suffered by the person defamed, or

(b) if the person defamed dies before damages are assessed, harm suffered by the person defamed by way of injury to property or financial loss.

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(2) Damages for defamation are to be the damages recoverable in accordance with the common law, but limited to damages for relevant harm.

(3) In particular, damages for defamation:

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(a) are not to include exemplary damages, and

(b) are not to be affected by the malice or other state of mind of the publisher at the time of the publication complained of or at any other time, except so far as that malice or other state of mind affects the relevant harm.

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### 52 Factors relevant in damages assessment (cf 1974 Act s 46A)

(1) In determining the amount of damages to be awarded in any proceedings for defamation, the court is to ensure that there is an appropriate and rational relationship between the relevant harm and the amount of damages awarded.

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(2) In determining the amount of damages for non-economic loss to be awarded in any proceedings for defamation, the court is to take into consideration the general range of damages for non-economic loss in personal injury awards in the State (including awards made under, or in accordance with, any statute regulating the award of any such damages).

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### 53 Other recoveries (cf 1974 Act s 48)

In proceedings for damages for defamation in respect of the publication of any matter, evidence is admissible on behalf of the defendant, in mitigation of damages, that the plaintiff:

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- (a) has already recovered damages, or
- (b) has brought proceedings for damages, or
- (c) has received or agreed to receive compensation,

for defamation in respect of any other publication of matter to the same purport or effect as the matter complained of in the proceedings.

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## Part 6 Declarations of falsity

**Introduction.** This Part enables a person who alleges that an actionable defamatory imputation has been made about him or her to apply to the Supreme Court for a declaration that the imputation is false and for an order that the declaration be published by the defendant. 5

The Part provides that the making of a declaration of falsity may be accompanied by an award of damages for economic loss. However, the making of a declaration precludes the commencement of proceedings for, or the award of, damages for non-economic loss.

The Part also provides that an application for a declaration must be made within 4 weeks of the publication of the imputation unless the Supreme Court grants leave to commence proceedings after that period. However, it is not possible for leave to be granted if the publication occurred more than 1 year before leave is sought. 10

### 54 Supreme Court may make a declaration of falsity

- (1) A person who claims that an actionable defamatory imputation has been published in respect of the person may apply to the Supreme Court for a declaration as to the falsity of that imputation. 15
- (2) If, on any such application, it is proved to the satisfaction of the Court that an actionable defamatory imputation concerning the applicant has been published, the Court may:
  - (a) declare that the imputation is false, and
  - (b) order that the declaration be published, on such conditions as the Court may impose, by the person who published the imputation. 20  
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- (3) A declaration of falsity may be made only if:
  - (a) the imputation is false, and
  - (b) the other elements for an actionable defamatory imputation referred to in section 7 (2) have been established.
- (4) Proceedings for a declaration of falsity must be commenced within 4 weeks of the publication of the matter carrying the imputation unless the Court grants leave to commence proceedings after that period. However, the Court cannot grant leave if the matter carrying the imputation was published more than one year before leave is sought. 30  
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(5) Without limiting the matters the Court may take into account in determining whether to make a declaration, the Court may decline to make a declaration in any of the following circumstances:

- (a) if the defendant has been granted a release, 5
- (b) if an accord and satisfaction has been made,
- (c) if an appropriate correction has been published,
- (d) if an offer of amends has been made,
- (e) if the making of a declaration would no longer serve a useful purpose. 10

#### **55 Defences to action for declaration of falsity**

- (1) Subject to subsection (2), the Supreme Court cannot decline to make a declaration of falsity only because of the existence of any defence to an action for damages based on the publication of an actionable defamatory imputation. 15
- (2) The Court cannot make a declaration of falsity if it is satisfied of the availability on the facts of a triable defence of absolute privilege or a triable defence under section 23, 24, 26 or 27.

#### **56 Indemnity costs for successful plaintiffs**

The Supreme Court is to order costs of or incidental to a successful application for a declaration of falsity to be assessed on an indemnity basis unless the interests of justice require otherwise. 20

#### **57 Effect of determination of proceedings for declaration of falsity**

- (1) Nothing in this Part prevents a person who has obtained a declaration of falsity in respect of an actionable defamatory imputation from recovering in the same proceedings damages for economic loss for the publication of that imputation. However, any defence (whether under this Act or otherwise) will, if established, defeat any claim for such damages. 25  
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Clause 57      Defamation Bill 1996

Part 6          Declarations of falsity

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- (2) The determination of proceedings for a declaration of falsity precludes a person from seeking or being awarded damages for non-economic loss for the imputation concerned except where proceedings to recover such damages are commenced following the defendant's failure to comply with an order to publish the declaration. 5

**58 Rules may prescribe form and content of declarations of falsity**

- (1) Rules of court for or with respect to the form and content of a declaration of falsity may be made under the *Supreme Court Act 1970*. 10
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

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## Part 7 Criminal defamation

**Introduction.** This Part creates an offence of criminal defamation and provides for a defence to proceedings for such an offence. The Part (together with sections 63, 64, 65 and 67) also makes provision for the conduct of proceedings in respect of such an offence.

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### 59 Common law criminal libel abolished (cf 1974 Act s 49)

- (1) Despite section 6, the common law misdemeanour of criminal libel that was abolished by the *Defamation Act 1974* remains abolished.
- (2) This section does not affect the law relating to blasphemous, seditious or obscene libel.

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### 60 Offence (cf 1974 Act s 50)

- (1) A person must not, without lawful excuse, publish matter defamatory of another living person:
    - (a) with intent to cause serious harm to any person (whether the person defamed or not), or
    - (b) if it is probable that the publication of the defamatory matter will cause serious harm to any person (whether the person defamed or not) with knowledge of that probability.
- Maximum penalty:
- (a) in the case of an individual—3 years imprisonment or 200 penalty units, or both, or
  - (b) in any other case—400 penalty units.
- (2) In subsection (1), *publish* has the meaning that it has in the law of tort relating to defamation.
  - (3) Proceedings for an offence under this section may be commenced only with the written consent of the Director of Public Prosecutions.
  - (4) In proceedings for an offence against this section, a consent purporting to have been signed by the Director of Public Prosecutions is, without proof of the signature, evidence of the consent of the Director of Public Prosecutions.

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- (5) However, if the Director of Public Prosecutions would be a defendant in any proceedings for an offence against this section, the references to the Director in subsections (3) and (4) are to be read as a reference to the Attorney General.
- (6) No inference of guilt is to be made from the publication of an adequate requested correction under Part 4 or anything done under Division 9 of Part 3. 5

**61 Defences** (cf 1974 Act s 51)

- (1) A person accused of an offence under section 60 in respect of the publication of matter defamatory of another person has lawful excuse for the publication only if, had the other person brought proceedings against the accused for damages for defamation in respect of the publication of that matter, the accused would be entitled to succeed in those proceedings. 10
- (2) However, regard is to be had only to the events happening before and at the time of publication. 15
- (3) If an information or other statement of a charge of an offence under section 60 alleges that the accused published the matter in question without lawful excuse, it is not necessary to negative, in the information or other statement, anything that would amount to lawful excuse under subsection (1). 20
- (4) At the trial of a person accused of an offence under section 60, it is not necessary for the prosecution to negative anything that would amount to lawful excuse under subsection (1) unless an issue respecting the thing is raised by evidence at the trial. 25

**62 Defamatory meaning: verdict** (cf 1974 Act s 53)

On a trial before a jury of an information for an offence under section 60, if it appears to the judge that the matter complained of is capable of bearing a defamatory meaning:

- (a) the question whether the matter complained of does bear a defamatory meaning is a question for the jury, and 30
- (b) the jury may give a general verdict of guilty or not guilty on the issues as a whole in like manner as in other cases.



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## Part 8      Miscellaneous

**Introduction.** This Part makes provision for various matters relating to the operation of the Act. These include:

- proof of the printing, production, publication or distribution of documents and of previous criminal convictions 5
- the use of incriminating answers
- the conferral of powers to make regulations and rules of court

The Part also repeals the *Defamation Act 1974* and gives effect to Schedules 4–6 to the Act.

### 63 Evidence of printing, production, publication or distribution (cf 1974 Act s 54) 10

- (1) This section applies to civil proceedings for defamation and to proceedings for an offence under section 60.
- (2) If a document appears to be printed or otherwise produced by a 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 any person, the statement is evidence that the document is so printed, produced, published or distributed. 15
- (3) Evidence that a number or part of a document appearing to be a periodical is printed, produced, published or distributed by or for any person is evidence that a document appearing to be another number or part of the periodical is so printed, produced, published or distributed. 20
- (4) In this section, *periodical* includes any newspaper, review, magazine or other printed document of which numbers or parts are published periodically. 25

### 64 Evidence of criminal offence (cf 1974 Act s 55)

- (1) This section applies to civil proceedings for defamation and to proceedings for an offence under section 60. 30
- (2) If there is a question of the truth of an imputation concerning any person, and the commission by that person of a criminal offence is relevant to that question, proof of the conviction by a court of that person for that offence is:

- (a) if the conviction is by a court of an Australian State or of the Commonwealth or of a Territory of the Commonwealth—conclusive evidence that the person committed the offence, and
  - (b) if the conviction is by a court of any other country—evidence that the person committed the offence. 5
- (3) For the purposes of subsection (2), an issue whether an imputation is false, true or substantially true is a question of the truth of the imputation.
- (4) Subsection (2) does not have effect if it is shown that the conviction has been set aside. 10
- (5) 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. 15
- (6) Subsection (5) does not affect the admissibility of other evidence to identify the facts on which the conviction is based.
- (7) In this section, *conviction* includes a conviction of a court-martial or a finding of guilty by a court-martial. 20

**65 Incriminating answers** (cf 1974 Act s 56)

- (1) In civil proceedings for or in respect of the publication of defamatory matter, if a question is put to any person or any person is ordered to discover or produce any document or thing: 25
- (a) the person is not excused from answering that question because to do so may incriminate the person or the person's spouse of an offence under section 60 in respect of the publication of that matter, or
  - (b) the person is not excused from discovering or producing that document or thing because to do so may incriminate the person or the person's spouse of an offence under section 60 in respect of the publication of that matter. 30

(2) The answer made by a person to any question, or the discovery or production by a person of any document or thing under an order, in civil proceedings for or in respect of the publication of defamatory matter, is not admissible in evidence on a prosecution of the person or the person's spouse for an offence under section 60 in respect of the publication of that matter. 5

(3) In this section:

***de facto partner:***

(a) of a man, means a woman who is living with the man as his wife on a genuine domestic basis although not married to him, and 10

(b) of a woman, means a man who is living with the woman as her husband on a genuine domestic basis although not married to her.

***spouse***, in relation to an answer, discovery or production by any person, means the person's spouse or *de facto partner* at the time of the answer, discovery or production. 15

**66 Representatives** (cf 1974 Act s 7 (3))

If a right or liability of a person in respect of defamation passes to the executor of the person's will, the administrator of the person's estate or another person, a reference in this Act that applies to the first-mentioned person includes, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the executor, administrator or other person. 20

**67 Criminal informations excluded** (cf 1974 Act s 52) 25

Section 6 of the Imperial Act called *The Australian Courts Act 1828* does not apply to an offence under section 60.

**68 Proceedings for offences**

(1) An offence under section 60 is an indictable offence.

(2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 60. 30

**69 Rules of court**

Rules of court may be made for the purposes of this Act, but this section does not limit any other power to make rules of court.

**70 Regulations**

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. 5

**71 Repeal of Defamation Act 1974 No 18**

The *Defamation Act 1974* is repealed. 10

**72 Amendment of Limitation Act 1969 No 31**

The *Limitation Act 1969* is amended as set out in Schedule 4.

**73 Amendment of other Acts**

The Acts specified in Schedule 5 are amended as set out in that Schedule. 15

**74 Savings and transitional provisions**

Schedule 6 has effect.

**75 Review of Act**

- (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. 20
- (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.
- (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. 25

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## Schedule 1 Absolute privilege

(Section 19)

### Part 1 General defences

#### 1 Parliamentary papers (cf 1974 Act s 17 (1) and (3) (a))

- (1) There is a defence of absolute privilege for the publication of a document by order or under the authority of a parliamentary body. 5
- (2) There is a defence of absolute privilege for the publication of a document previously published as mentioned in subclause (1) or a copy of a document so published. 10

#### 2 Other parliamentary papers of this State (cf 1974 Act s 17 (2) and (3) (b))

- (1) There is a defence of absolute privilege for the publication by an authorised printer or under the authority of the Presiding Officer of either House of Parliament of: 15
  - (a) reports of the debates and proceedings of the House or any committee of that House, and
  - (b) a report of an individual complete speech of a Member of the House, provided the report is printed with a certificate by a person authorised by the Presiding Officer, stating the date and context of the speech and stating that the speech is published under authority, and 20
  - (c) proofs of such reports and copies of proofs of such reports, provided they are not known by the publisher to contain substantial printing or typographical errors or omissions and only while the official version of the reports has not become available, and 25
  - (d) recordings, or transcripts of recordings, of the debates and proceedings of the House or any committee of that House (being recordings or transcripts made in connection with the preparation of such reports), but only while the official version of those reports has not become available. 30

- (2) There is a defence of absolute privilege for the publication by an authorised printer or under the authority of the Presiding Officers jointly of:
- (a) reports of debates and proceedings of a joint sitting or of a joint committee, and 5
  - (b) a report of an individual complete speech of a Member at a joint sitting, provided the report is printed with a certificate by a person authorised by the Presiding Officers, stating the date and context of the speech and stating that the speech is published under authority, and 10
  - (c) proofs of such reports and copies of proofs of such reports, provided they are not known by the publisher to contain substantial printing or typographical errors or omissions, and
  - (d) recordings, or transcripts of recordings, of the debates and proceedings of a joint sitting or of a joint committee (being recordings or transcripts made in connection with the preparation of such reports), but only while the official version of those reports has not become available. 15
- (3) There is a defence of absolute privilege for the publication of reports and proofs, previously published as mentioned in subclause (1) or (2), or a copy of reports and proofs so published. 20
- (4) In this clause:
- joint committee* means a joint committee of both Houses of Parliament. 25
- joint sitting* means a joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly.
- Presiding Officer* means the President of the Legislative Council or the Speaker of the Legislative Assembly. 30
- recordings* includes audio recordings and audio-visual recordings.

**3 Proceedings of inquiry** (cf 1974 Act s 18)

There is a defence of absolute privilege for a publication in the course of an inquiry made under the authority of an Act or Imperial Act or under the authority of Her Majesty, of the Governor, or of either House or both Houses of Parliament.

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**4 Report of inquiry** (cf 1974 Act s 19)

If a person is appointed under the authority of an Act or an Imperial Act or under the authority of Her Majesty, of the Governor or of either House or both Houses of Parliament to hold an inquiry, there is a defence of absolute privilege for a publication by the person in an official report of the result of the inquiry.

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**Part 2 Specific defences****5 Anti-Discrimination Act 1977** (cf 1974 Act s 17D)

(1) There is a defence of absolute privilege for:

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(a) a publication to or by:

(i) a member or the Registrar of the Equal Opportunity Tribunal constituted under the *Anti-Discrimination Act 1977*, or

(ii) a member of the Anti-Discrimination Board constituted under that Act, or

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(iii) the President of the Board, or

(iv) any officer of the President of that Board, or

(b) a publication to any officer of the Public Service appointed or employed to assist in the execution or administration of that Act, or

25

(c) a publication to or by the Director of Equal Opportunity in Public Employment appointed under that Act,

if the publication is made for the purpose of the execution or administration of the Act.

30

- (2) There is a defence of absolute privilege for the publication of a report:
- (a) referred to in section 91 (2) or 94 (1) of the *Anti-Discrimination Act 1977* of the President of the Anti-Discrimination Board made to the Equal Opportunity Tribunal, or 5
  - (b) referred to in section 120 (2), 121, 122 or 122R (b) of that Act to the Minister administering that Act.

**6 Casino Control Act 1992** (cf 1974 Act s 17N)

There is a defence of absolute privilege for a publication to or by the Casino Control Authority, or the person presiding at an inquiry under section 143 of the *Casino Control Act 1992* for the purpose of such a hearing. 10

**7 Children (Care and Protection) Act 1987** (cf 1974 Act s 17H)

There is a defence of absolute privilege for the publication of a report made under section 100 (6) of the *Children (Care and Protection) Act 1987* by a Board of Review established under that Act. 15

**8 Coal Mines Regulation Act 1982** (cf 1974 Act s 17G)

There is a defence of absolute privilege for the publication of a report referred to in section 94 of the *Coal Mines Regulation Act 1982* of an inspector appointed under that Act to or by the Minister administering that Act. 20

**9 Community Services (Complaints, Appeals and Monitoring) Act 1993** (cf 1974 Act s 17KA) 25

There is a defence of absolute privilege:

- (a) for a publication to or by a solution facilitator for the purpose of the resolution of a complaint under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*, and 30
- (b) for the publication by any such facilitator of a report or information under section 34 of that Act, and



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- (c) for a publication in the course of proceedings before the Community Services Appeals Tribunal under that Act, and
  - (d) for the publication by that Tribunal of an official report of a decision of that Tribunal or of the reasons for that decision. 5

**10 Farm Produce Act 1983** (cf 1974 Act s 17EA)

There is a defence of absolute privilege for the publication of a notice under section 47 or 48 of the *Farm Produce Act 1983*.

**11 Harness Racing Authority Act 1977** (cf 1974 Act s 17E) 10

There is a defence of absolute privilege:

- (a) for a publication in the course of an appeal under Part 5 of the *Harness Racing Authority Act 1977*, and
- (b) for a publication by the Harness Racing Authority of New South Wales or the Harness Racing Appeals Tribunal in an official report of its decision in respect of any such appeal and of the reasons for that decision. 15

**12 Health Care Complaints Act 1993** (cf 1974 Act s 17R)

(1) There is a defence of absolute privilege:

- (a) for a publication to or by the Health Care Complaints Commission of or concerning a complaint by a complainant under the *Health Care Complaints Act 1993*, and 20
- (b) for a publication to or by a conciliator for the purpose of the conciliation of a complaint under the *Health Care Complaints Act 1993*, and 25
- (c) for the publication by any such conciliator of a report or information under section 53 or 54 of the *Health Care Complaints Act 1993*.

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Schedule 1 Absolute privilege

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- (2) There is a defence of absolute privilege:
- (a) for a publication of a report under section 30 of the *Health Care Complaints Act 1993* (or that section as applied by section 61 of that Act), and
  - (b) for the publication of a report made under section 62 (1) of the *Health Care Complaints Act 1993* by the Health Care Complaints Commission constituted under that Act. 5

**13 HomeFund Commissioner Act 1993** (cf 1974 Act s 17O)

- (1) There is a defence of absolute privilege for a publication to or by the HomeFund Commissioner, as HomeFund Commissioner, or to any member of the staff of the HomeFund Commissioner, as such a member. 10
- (2) Subclause (1) applies in relation to an acting HomeFund Commissioner in the same way as it applies in relation to the HomeFund Commissioner. 15
- (3) There is a defence of absolute privilege for the publication under section 34 (3) of the *HomeFund Commissioner Act 1993* of a report.
- (4) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the *HomeFund Commissioner Act 1993*, of a copy of a report previously made public under section 34 (3) of that Act. 20

**14 HomeFund Restructuring Act 1993** (cf 1974 Act s 17P)

There is a defence of absolute privilege for a publication to or by the HomeFund Advisory Panel, or to or by any member of the HomeFund Advisory Panel, for the purposes of section 10, 11 or 12 of the *HomeFund Restructuring Act 1993*. 25

**15 Independent Commission Against Corruption Act 1988** (cf 1974 Act s 17K) 30

- (1) There is a defence of absolute privilege for a publication to or by the Independent Commission Against Corruption or the Commissioner for the Commission as Commissioner, or to any officer of the Commission (within the meaning of the *Independent Commission Against Corruption Act 1988*) as such an officer. 35

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- (2) This clause applies in relation to any hearing before the Independent Commission Against Corruption or any other matter relating to the powers, authorities, duties or functions of the Commission.
- (3) This clause extends to publications made before the commencement of section 17K of the *Defamation Act 1974*. 5
- 16 Independent Pricing and Regulatory Tribunal Act 1992** (cf 1974 Act s 17M)
- (1) There is a defence of absolute privilege for a publication to or by the Independent Pricing and Regulatory Tribunal or to any member of the Tribunal or member of staff of the Tribunal in his or her capacity as such a member. 10
- (2) This clause applies in relation to any hearing before the Independent Pricing and Regulatory Tribunal or any other matter relating to the powers, authorities, duties or functions of the Tribunal. 15
- 17 Law Reform Commission Act 1967** (cf 1974 Act s 17BA)
- (1) A report published pursuant to section 13 (6) of the *Law Reform Commission Act 1967* is, for the purposes of this Act, taken to have been published under the authority of either House of Parliament. 20
- (2) There is a defence of absolute privilege:
- (a) for a publication in the course of the proceedings of, or in the course of an inquiry held by, the Law Reform Commission under the *Law Reform Commission Act 1967*, and 25
- (b) for any other publication by the Law Reform Commission in connection with a reference to it under that Act.
- (3) Subclause (2) does not apply to a report referred to in section 13 of the *Law Reform Commission Act 1967*. 30
- 18 Legal Aid Commission Act 1979** (cf 1974 Act s 17F)
- There is a defence of absolute privilege for a publication to or by the Legal Aid Commission of New South Wales constituted under the *Legal Aid Commission Act 1979*, an officer of that Commission or a committee established under that Act if the publication is made for the purpose of the execution or administration of that Act. 35

**19 Legal Profession Act 1987** (cf 1974 Act s 17J)

- (1) There is a defence of absolute privilege:
- (a) for a publication to or by:
    - (i) the Bar Council, or
    - (ii) the Law Society Council, or 5
    - (iii) the Legal Services Commissioner, or
    - (iv) the Legal Services Tribunal, or
    - (v) a member of any of those bodies as such a member, for the purpose of the making or referral of a complaint, or the investigation, hearing or review of a complaint, under Part 10 of the *Legal Profession Act 1987*, and 10
  - (b) for the publication 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, and of the reasons for that decision or determination, under Part 10 of the *Legal Profession Act 1987*. 15
- (2) In this clause:
- (a) a reference to the Bar Council or the Law Society Council includes a reference to a committee of either of those Councils, and 20
  - (b) a reference to a member of the Bar Council or the Law Society Council includes a reference to a member of any such committee.

**20 Medical Practice Act 1992** (cf 1974 Act s 17FA)

- (1) There is a defence of absolute privilege: 25
- (a) for a publication to or by:
    - (i) the New South Wales Medical Board, or
    - (ii) an Impaired Registrants Panel, or
    - (iii) a Professional Standards Committee, or
    - (iv) the Medical Tribunal, or 30
    - (v) a member of any of those bodies as such a member, of the assessment or referral of a complaint or other matter or the holding of any inquiry or investigation or any appeal under the *Medical Practice Act 1992*, and

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- (b) for a publication by a body or person referred to in paragraph (a) of a report of a decision or determination in respect of a complaint or other matter or any inquiry, investigation or appeal, and of the reasons for that decision or determination. 5
- (2) In this clause:
- (a) a reference to the New South Wales Medical Board includes a reference to a committee of the Board, and
- (b) a reference to a member of the Board includes a reference to a member of any such committee. 10
- 21 Motor Accidents Act 1988** (cf 1974 Act s 17BC)
- There is a defence of absolute privilege:
- (a) for a publication to or by:
- (i) a licensed insurer (within the meaning of the *Motor Accidents Act 1988*), or 15
- (ii) the Nominal Defendant,
- for the purpose of any claim or any proceedings arising from any claim under the *Motor Accidents Act 1988*, and
- (b) for a publication by any such licensed insurer or the Nominal Defendant of a report of a decision or determination in respect of any such claim and of the reason for that decision or determination, and 20
- (c) for a publication by the Motor Accidents Authority of New South Wales of the whole or any part of the register maintained by the Authority under section 67 of the *Motor Accidents Act 1988*. 25
- 22 New South Wales Crime Commission Act 1985** (cf 1974 Act s 17L)
- (1) There is a defence of absolute privilege for a publication to or by the New South Wales Crime Commission or to any member of the Commission or member of the staff of the Commission in his or her capacity as such a member. 30
- (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.
- (3) This clause extends to publications made before the commencement of this clause. 35
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- 23 Ombudsman Act 1974 and Police Service Act 1990** (cf 1974 Act s 17A)
- (1) There is a defence of absolute privilege for a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer. 5
  - (2) Subclause (1) applies in relation to an acting Ombudsman, the Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the Ombudsman.
  - (3) There is a defence of absolute privilege for a publication to a Member of Parliament for the purposes of section 12 (2) of the *Ombudsman Act 1974* or section 125 (4) of the *Police Service Act 1990*. 10
  - (4) There is a defence of absolute privilege for the publication under section 31AA of the *Ombudsman Act 1974* or under section 170A or 197 (5) of the *Police Service Act 1990* of a report. 15
  - (5) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the *Ombudsman Act 1974*, of a copy of a report previously made public under section 31AA of that Act.
  - (6) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the *Police Service Act 1990* of a copy of a report previously made public under section 170A or 197 (5) of that Act. 20
- 24 Prisons Act 1952 and Sentencing Act 1989** (cf 1974 Act s 17CA) 25
- There is a defence of absolute privilege:
- (a) for a publication of a report or other document under Part 10 of the *Prisons Act 1952* or Part 3 of, or Part 2 of Schedule 2 to, the *Sentencing Act 1989*, and
  - (b) for a publication in the course of any proceedings of the following bodies: 30
    - (i) the Offenders Review Board or a Division or a committee of that Board,
    - (ii) the Serious Offenders Review Council or a Division or a committee of that Council, and 35
  - (c) for a publication by a body referred to in paragraph (b) of a report of any proceedings referred to in that paragraph.

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**25 Privacy Committee Act 1975** (cf 1974 Act s 17B)

- (1) There is a defence of absolute privilege for a publication to a member of the Privacy Committee constituted under the *Privacy Committee Act 1975*, a member of a subcommittee of that Committee or an officer of that Committee for the purpose of the execution or administration of that Act or, for the purpose, by that Committee, by a subcommittee of that Committee to that Committee or by such a member or officer. 5
- (2) There is a defence of absolute privilege for the publication under section 18 (3) of the *Privacy Committee Act 1975* of a report under that Act. 10
- (3) There is a defence of absolute privilege for the publication under the authority of the Minister for the time being administering the *Privacy Committee Act 1975* of a copy of a report previously made public under section 18 (3) of that Act. 15

**26 Protected Disclosures Act 1994** (cf 1974 Act s 17QA)

There is a defence of absolute privilege for a publication to or by a public official or public authority referred to in section 8 (1) (b) or (c) of the *Protected Disclosures Act 1994* 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 if the publication is for the purpose of investigating that allegation. 20

**27 Public Finance and Audit Act 1983** (cf 1974 Act s 17Q)

There is a defence of absolute privilege for a publication to or by the Auditor-General or a member of the Audit Office of New South Wales as such a member of a disclosure made in relation to a complaint under section 38B (1A) of the *Public Finance and Audit Act 1983*. 25

**28 Public Hospitals Act 1929** (cf 1974 Act s 17C) 30

There is a defence of absolute privilege for the publication under section 33H of the *Public Hospitals Act 1929* of a decision and the reasons for that decision of a board referred to in that section.

**29 Racing Appeals Tribunal Act 1983** (cf 1974 Act s 17DA)

There is a defence of absolute privilege:

- (a) for a publication in the course of an appeal under the *Racing Appeals Tribunal Act 1983*, and
- (b) for a publication by the Racing Appeals Tribunal in an official report of its decision in respect of any such appeal and of the reasons for that decision. 5

**30 Workers Compensation Act 1987** (cf 1974 Act ss 17BB and 17BD)

- (1) There is a defence of absolute privilege:
  - (a) for a publication to or by a conciliation officer for the purpose of any proceedings under the *Workers Compensation Act 1987*, and 10
  - (b) for the publication by any such conciliation officer of a report of a decision or determination in respect of any such proceedings and of the reasons for that decision or determination, and 15
  - (c) for the publication by any such conciliation officer of a report of a conciliation certificate under section 98D of the *Workers Compensation Act 1987*.
- (2) There is a defence of absolute privilege: 20
  - (a) for a publication to or by an insurer for the purpose of any claim or any proceedings arising from any claim under the *Workers Compensation Act 1987*, and
  - (b) for a publication by an insurer of a report of a decision or determination in respect of any such claim and of the reason for that decision or determination, and 25
  - (c) for a publication of information under section 93D of the *Workers Compensation Act 1987* by the Authority referred to in that section, and
  - (d) for a publication to or by an insurer pursuant to an exchange of information authorised by section 93D (2) of the *Workers Compensation Act 1987*. 30
- (3) In subclause (2), *insurer* and *claim* have the same meanings as in Division 1A of Part 4 of the *Workers Compensation Act 1987* and in subclause (2) (d), *insurer* has the extended meaning it has in section 93D of that Act. 35



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## Schedule 2 Protected reports

(Section 23)

### Part 1 General reports

- 1 Public proceedings of parliamentary bodies** (cf 1974 Act Sch 2, cl 2 (1)) 5  
Proceedings in public of a parliamentary body.
- 2 Public proceedings in international organisations** (cf 1974 Act Sch 2, cl 2 (2)) 10  
Proceedings in public of an international organisation of any country or of governments of any countries.
- 3 Public proceedings of international governmental conferences** (cf 1974 Act Sch 2, cl 2 (3))  
Proceedings in public of an international conference at which governments of any countries are represented.
- 4 Proceedings of international judicial or arbitral tribunals** (cf 1974 Act Sch 2, cl 2 (4)) 15  
Proceedings in public of the International Court of Justice or of any other judicial or arbitral tribunal for the decision of any matter in dispute between nations or of any other international judicial or arbitral tribunal. 20
- 5 Public proceedings of a court** (cf 1974 Act Sch 2, cl 2 (5))  
Proceedings in public of a court of any country.
- 6 Public proceedings of inquiries** (cf 1974 Act Sch 2, cl 2 (6)) 25  
Proceedings in public of an inquiry held under:  
(a) the legislation of the Commonwealth, another State, a Territory of the Commonwealth or a foreign country,  
(b) the authority of the government of the Commonwealth, another State, a Territory of the Commonwealth or a foreign country.

**7 Public proceedings of local and other public authorities**

Proceedings in public of a local council, board or other authority constituted for public purposes under the legislation of the Commonwealth, a State or a Territory of the Commonwealth, so far as the proceedings relate to a matter of public interest. 5

**8 Proceedings of certain associations** (cf 1974 Act Sch 2, cl 2 (7))

- (1) So much of the proceedings in public of an association to which this clause applies or of a committee or governing body of an association to which this clause applies (being proceedings in furtherance of the objects referred to in subclause (2)) as comprises a finding or decision that: 10
- (a) relates to a member of the association or a person subject by contract or otherwise by law to control by the association, and
  - (b) was made in Australia or has effect, by law or custom or otherwise, in any part of Australia. 15
- (2) This clause applies to an association, whether incorporated or not and wherever formed, that is:
- (a) an association:
    - (i) having among its objects the advancement of any art, science or religion or the advancement of learning in any field, and 20
    - (ii) empowered by its constitution to control or adjudicate on matters connected with those objects, or 25
  - (b) an association:
    - (i) having among its objects the promotion of any calling (ie any trade, business, industry or profession) or the promotion or protection of the interests of persons engaged in any calling, and 30
    - (ii) empowered by its constitution to control or adjudicate on matters connected with the calling or on matters connected with the conduct of persons engaged in the calling, or

- 
- (c) an association:
- (i) having among its objects the promotion of any game, sport or pastime to the playing or exercise of which the public is admitted as spectators or otherwise or the promotion or protection of the interests of persons connected with the game, sport or pastime, and 5
- (ii) empowered by its constitution to control or adjudicate on matters connected with the game, sport or pastime. 10

**9 Proceedings of public meetings** (cf 1974 Act Sch 2, cl 2 (9))

Proceedings of a meeting open to the public, whether with or without restriction, held in Australia, so far as the proceedings relate to a matter of public interest, including the advocacy or candidature of a person for a public office. 15

**Part 2 Specific reports**

**10 Proceedings of Anti-Discrimination Board** (cf 1974 Act Sch 2, cl 2 (12))

Proceedings at an investigation, inquiry or examination conducted by or on behalf of the Anti-Discrimination Board constituted under the *Anti-Discrimination Act 1977*. 20

**11 Proceedings of Bar Council, Law Society Council, Legal Services Commissioner and Legal Services Tribunal** (cf 1974 Act Sch 2, cl 2 (16))

Proceedings of the Bar Council, Law Society Council, Legal Services Commissioner or Legal Services Tribunal under Part 10 of the *Legal Profession Act 1987*. 25

**12 Proceedings of Committee of Australian Jockey Club** (cf 1974 Act Sch 2, cl 2 (8))

Proceedings on an appeal to the Committee of the Australian Jockey Club under section 32 of the *Australian Jockey Club Act 1873*. 30

- 13 Proceedings of Crime Commission** (cf 1974 Act Sch 2, cl 2 (19))  
Proceedings held in public by the New South Wales Crime Commission.
- 14 Proceedings of Equal Opportunity Tribunal** (cf 1974 Act Sch 2, cl 2 (12)) 5  
Proceedings at an inquiry conducted by the Equal Opportunity Tribunal constituted under the *Anti-Discrimination Act 1977*.
- 15 Proceedings of Harness Racing Authority and Appeal Tribunal** (cf 1974 Act Sch 2, cl 2 (13)) 10  
Proceedings on an appeal to the Harness Racing Authority or to the Harness Racing Appeals Tribunal under Part 5 of the *Harness Racing Authority Act 1977*.
- 16 Proceedings of HomeFund Commissioner** (cf 1974 Act Sch 2, cl 2 (20)) 15  
Proceedings of the HomeFund Commissioner, so far as those proceedings are included in a report previously made public under section 34 (3) of the *HomeFund Commissioner Act 1993*.
- 17 Proceedings of Independent Commission Against Corruption** (cf 1974 Act Sch 2, cl 2 (18)) 20  
Proceedings at a hearing held in public by the Independent Commission Against Corruption.
- 18 Proceedings of Law Reform Commission** (cf 1974 Act Sch 2, cl 2 (15)) 25  
Proceedings in public of, or proceedings in public at an inquiry held by, the Law Reform Commission under the *Law Reform Commission Act 1967*.
- 19 Proceedings of Medical Board and other medical bodies** (cf 1974 Act Sch 2, cl 2 (14A)) 30  
Proceedings of the New South Wales Medical Board, a Professional Standards Committee or the Medical Tribunal under the *Medical Practice Act 1992*.
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**20 Proceedings of Ombudsman** (cf 1974 Act Sch 2, cl 2 (10))

Proceedings of the Ombudsman, so far as those proceedings are included in a report previously made public under section 31AA of the *Ombudsman Act 1974* or under section 170A (2) or 197 (5) of the *Police Service Act 1990*.

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**21 Proceedings of Privacy Committee** (cf 1974 Act Sch 2, cl 2 (11))

Proceedings of the Privacy Committee, so far as those proceedings are included in a report previously made public under section 18 (3) of the *Privacy Committee Act 1975*.

**22 Proceedings of Racing Appeals Tribunal** (cf 1974 Act Sch 2, cl 2 (14))

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Proceedings on an appeal to the Racing Appeals Tribunal under the *Racing Appeals Tribunal Act 1983*.

**23 Proceedings of Workers Compensation conciliation officer** (cf 1974 Act Sch 2, cl 2 (17))

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Proceedings of a conciliation officer under the *Workers Compensation Act 1987*.

## **Schedule 3 Official and public documents and records**

(Section 24)

### **1 Parliamentary documents** (cf 1974 Act Sch 2, cl 3 (1))

Any report, papers, votes or proceedings published in any country by order or under the authority of a parliamentary body of that country. 5

### **2 Parliamentary debates and proceedings** (cf 1974 Act Sch 2, cl 3 (2))

The debates and proceedings of either House of Parliament published by an authorised printer or under the authority of the President or Speaker of the House. 10

### **3 Court judgments and records** (cf 1974 Act Sch 2, cl 3 (3))

A document that is:

- (a) a judgment, being a judgment, decree or order in civil proceedings, of a court of any country, or 15
- (b) a record of the court relating to:
  - (i) such a judgment, or
  - (ii) the enforcement or satisfaction of such a judgment.

### **4 Documents open to public inspection** (cf 1974 Act Sch 2, cl 3 (4)) 20

A record or document kept by a government or statutory authority or court of the Commonwealth, a State or a Territory of the Commonwealth or kept in pursuance of the legislation of the Commonwealth, a State or a Territory, being a record or document that is open to inspection by the public. 25

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**5 Document of Bar Council, Law Society Council or other legal disciplinary bodies** (cf 1974 Act Sch 2, cl 3 (5))

A document that consists of a report made by:

- (a) the Bar Council, or
- (b) the Law Society Council, or
- (c) the Legal Services Commissioner, or
- (d) the Legal Services Tribunal,

of its decision or determination in respect of a complaint, and of the reasons for the decision or determination, under Part 10 of the *Legal Profession Act 1987*.

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**6 Document of Medical Board, Professional Standards Committee or Medical Tribunal** (cf 1974 Act Sch 2, cl 3 (3A))

A document that consists of a report made by:

- (a) the New South Wales Medical Board, or
- (b) a Professional Standards Committee, or
- (c) the Medical Tribunal,

of its decision or determination in respect of a complaint or an inquiry or appeal, and of its reasons for that decision or determination, under the *Medical Practice Act 1992*.

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**7 Report of Workers Compensation conciliation officer** (cf 1974 Act Sch 2, cl 3 (6))

A document that consists of a report made by a conciliation officer of his or her decision or determination in respect of any proceedings under the *Workers Compensation Act 1987* or that consists of a conciliation certificate under section 98D of that Act.

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**Schedule 4 Amendment of Limitation Act 1969**

(Section 72)

**[1] Section 14B**

Insert after section 14A:

**14B Defamation**

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(1) This section applies to a cause of action based on the publication of defamatory matter that accrues after the commencement of this section. However, if:

(a) such a cause of action is one of two or more causes of action in proceedings commenced by the plaintiff, and

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(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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(c) one or more of the other causes of action in the proceedings accrued before the commencement of this section,

then this Act applies to each cause of action regardless of when it accrues as if this section had not been enacted.

20

(2) An action on a cause of action to which this section applies is not maintainable if brought after the expiration of one year running from the date on which the defamatory matter was published.

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(3) Nothing in this section affects the operation of section 54 (4) of the *Defamation Act 1996*.



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**[2] Part 3, Division 4**

Insert after Division 3:

**Division 4 Defamation**

**62A Extension of limitation period by court**

- (1) This section applies to a cause of action based on the publication of defamatory matter that accrues after the commencement of this section. However, if: 5
- (a) such a cause of action is one of two or more causes of action in proceedings commenced by the plaintiff, and 10
  - (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 15
  - (c) one or more of the other causes of action in the proceedings accrued before the commencement of this section,
- then this Act applies to each cause of action regardless of when it accrues as if this section had not been enacted. 20
- (2) A person claiming to have a cause of action to which this section applies may apply to a court for an order extending the limitation period for the cause of action.
- (3) After hearing such of the persons likely to be affected by the application as it sees fit, the court may, if it decides that it is just and reasonable to do so, order that the limitation period for the cause of action be extended for such period as it determines. However, the court cannot extend the period beyond 3 years running from the date on which the defamatory matter concerned was published. 25 30

**62B Effect of order**

If a court orders the extension of a limitation period for a cause of action under section 62A, the limitation period is accordingly extended for the purposes of:

- (a) an action brought by the applicant in that court on the cause of action that the applicant claims to have, and 5
- (b) section 26 (1) (b) in relation to any associated contribution action brought by the person against whom that cause of action lies. 10

**62C Costs**

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 62A 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. 15

**62D Prior expiry of limitation period**

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. 20

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**Schedule 5 Amendment of other Acts**

(Section 73)

**5.1 Anti-Discrimination Act 1977 No 48**

**[1] Section 20C Racial vilification unlawful**

Omit "Division 3 of Part 3 of the *Defamation Act 1974*" from section 20C (2) (b). 5  
Insert instead "Schedule 1 to the *Defamation Act 1996*".

**[2] Section 49ZT Homosexual vilification unlawful**

Omit "Division 3 of Part 3 of the *Defamation Act 1974*" from section 49ZT (2) (b). 10  
Insert instead "Schedule 1 to the *Defamation Act 1996*".

**[3] Section 49ZXB HIV/AIDS vilification unlawful**

Omit "Division 3 of Part 3 of the *Defamation Act 1974*" from section 49ZXB (2) (b).  
Insert instead "Schedule 1 to the *Defamation Act 1996*". 15

**5.2 Crimes Act 1900 No 40**

**Section 579 Evidence of proceedings dealt with by way of recognizance after 15 years**

Omit "section 55 of the *Defamation Act 1974*" from section 579 (4) wherever occurring. 20  
Insert instead "section 60 of the *Defamation Act 1996*".

**5.3 Criminal Procedure Act 1986 No 209**

**Part 9A, Table 1, Part 4**

Insert after clause 18:

**18A Defamation Act 1996**

An offence under section 60 of the *Defamation Act 1996*. 5

**5.4 Government and Related Employees Appeal Tribunal Act 1980 No 39**

**Section 50 Application of the Defamation Act 1996**

Omit "section 18 of the *Defamation Act 1974*".  
Insert instead "clause 3 of Schedule 1 to the *Defamation Act 1996*". 10

**5.5 Guardianship Act 1987 No 257**

**Section 74 Application of the Defamation Act 1996**

Omit "section 18 of the *Defamation Act 1974*".  
Insert instead "clause 3 of Schedule 1 to the *Defamation Act 1996*".

**5.6 Health Care Complaints Act 1993 No 105** 15

**Section 72 Confidentiality**

Omit "Schedule 2 to, the *Defamation Act 1974*" from section 72 (11) (b).  
Insert instead "clause 6 of Schedule 2 to, the *Defamation Act 1996*".

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**5.7 Independent Commission Against Corruption Act 1988  
No 35**

**[1] Section 70 Confidentiality**

Omit "Schedule 2 to, the *Defamation Act 1974*" from section 70 (8) (b).

Insert instead "clause 6 of Schedule 2 to, the *Defamation Act 1996*".

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**[2] Section 72J Status of committee**

Omit "*Defamation Act 1974*" from section 72J (2).

Insert instead "*Defamation Act 1996*".

**5.8 Mental Health Act 1990 No 9**

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**Section 260 Application of the Defamation Act 1996**

Omit "section 18 of the *Defamation Act 1974*".

Insert instead "clause 3 of Schedule 1 to the *Defamation Act 1996*".

**5.9 Notice of Action and Other Privileges Abolition Act  
1977 No 19**

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**Section 5 Amendment of other Acts**

Omit "Division 8 of Part 3 of the *Defamation Act 1974*" from section 5 (4) (c).

Insert instead "Division 9 of Part 3 of the *Defamation Act 1996*".

**5.10 Ombudsman Act 1974 No 68**

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**Section 31H Confidentiality**

Omit "Schedule 2 to, the *Defamation Act 1974*" from section 31H (8) (b).

Insert instead "clause 6 of Schedule 2 to, the *Defamation Act 1996*".

**5.11 Public Finance and Audit Act 1983 No 152**

**Section 58 Evidence**

Omit "Schedule 2 to, the *Defamation Act 1974*" from section 58 (9) (b).  
Insert instead "clause 6 of Schedule 2 to, the *Defamation Act 1996*".      5

**5.12 Regulation Review Act 1987 No 165**

**Section 12 Confidentiality**

Omit "Schedule 2 to, the *Defamation Act 1974*" from section 12 (8) (b).  
Insert instead "clause 6 of Schedule 2 to, the *Defamation Act 1996*".      10

**5.13 Special Commissions of Inquiry Act 1983 No 90**

**Section 10 Reports**

Omit "*Defamation Act 1974*" from section 10 (4).  
Insert instead "*Defamation Act 1996*".

**5.14 Transport Appeal Boards Act 1980 No 104**      15

**Section 26 Application of the Defamation Act 1996**

Omit "section 18 of the *Defamation Act 1974*".  
Insert instead "clause 3 of Schedule 1 to the *Defamation Act 1996*".

**5.15 Victims Compensation Act 1987 No 237**

**Section 69 Application of Defamation Act 1996**      20

Omit "section 18 of the *Defamation Act 1974*".  
Insert instead "clause 3 of Schedule 1 to the *Defamation Act 1996*".

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**Schedule 6 Savings and transitional provisions**

(Section 74)

**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: 5  
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 day. 10
- (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 15
- (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** 20

**2 Definition**

In this Part:

*repealed Act* means the *Defamation Act 1974*.

**3 Application of the provisions of this Act**

- (1) This Act applies only to causes of action that accrue after Part 2 of this Act commences.
- (2) However, a provision of this Act does not apply to a cause of action that accrues after the commencement of Part 2 if: 5
  - (a) the cause of action is one of two or more causes of action in proceedings commenced by the 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 10
  - (c) one or more of the other causes of action in the proceedings accrued before the commencement of Part 2.
- (3) The repealed Act is taken to apply to a cause of action to which this Act does not apply because of this clause in the same way as it would have applied to that action had this Act not been enacted. 15

**4 Interpretation of corresponding provisions**

Nothing in this Act affects the interpretation of any provision of this Act that substantially re-enacts a provision of the repealed Act. 20

**5 Preservation of existing defences**

The repeal of the repealed Act does not affect any defence that a person had under that Act in respect of any publication made before that repeal. 25

**6 Offences under repealed Act**

The provisions of the repealed Act, as in force immediately before its repeal, continue to apply to offences alleged to have been committed before its repeal.



**7 References to repealed Act**

A reference in any instrument made under any other Act or, any document of any kind, to the repealed Act or a provision of the repealed Act is to be read as a reference to this Act or the equivalent provision of this Act.

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