



Australian Capital Territory

Defamation (Amendment) Act 1909 No 22

Republication No 2

Republication date: 2 May 2002

Last amendment made by Act 2001 No 56

Amendments incorporated to 5 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Defamation (Amendment) Act 1909* as in force on 2 May 2002. It includes any amendment, repeal or expiry affecting the republished law to 5 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Defamation (Amendment) Act 1909

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Amendments incorporated to
5 September 2001



Australian Capital Territory

Defamation (Amendment) Act 1909

An Act to amend the law of defamation

Preliminary

1 Name of Act

This Act is the *Defamation (Amendment) Act 1909*, and shall be construed with the *Defamation Act 1901*.

2 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

newspaper means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale, and published, periodically, or in parts or numbers, at intervals not exceeding 1 month between the publication of any 2 such papers, parts, or numbers.

Also any paper printed to be dispersed and made public, weekly or oftener, or at intervals not exceeding 1 month, containing only or principally advertisements.

proprietor means and includes as well the sole proprietor of any newspaper, as also, for a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like way representing or responsible for the other shares or interests in the newspaper, and no other person.

Declarations, indictments, and criminal prosecutions

3 Obscene or blasphemous matter need not be set out in information etc

It shall not be necessary to set out in any information, indictment, or criminal proceeding instituted against the publisher of any obscene or blasphemous libel the obscene or blasphemous passages, but it shall be sufficient to deposit the book, newspaper, or other

document containing the alleged libel with the information, indictment, or criminal proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document, the alleged libel is to be found, and the particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the information, indictment, or proceeding.

4 No prosecution without order of judge

No criminal prosecution shall be commenced against any person for the publication of any libel without the order of a judge of the Supreme Court first had and obtained.

The application shall be made on notice to the person accused, who shall have an opportunity of being heard against the application.

Civil and criminal defences

5 Publication in newspaper of matters of public interest

No criminal proceeding or civil action shall be maintainable against any person or corporation in respect of the printing or publishing in good faith for the information of the public in any newspaper any of the following matters, provided they are not blasphemous, seditious, or obscene—

- (a) a fair and accurate report of the proceedings of the Legislative Assembly or either House of the Parliament or of the Parliament of a State;
- (b) a fair and accurate report of the proceedings of any committee of the Legislative Assembly or any such House;
- (d) a fair and accurate report of the public proceedings of any court of justice, whether the proceedings are preliminary or interlocutory or final, unless, for proceedings that are not final, the publication has been prohibited by the court:

Provided that matter of a defamatory nature ruled to be inadmissible by the court shall not be deemed to be part of the public proceedings of the court as aforesaid;

- (e) a copy or an abstract of any judgment, or of the entries relative to any judgment, that are recorded in any books kept in the office of any court of justice;
- (f) a fair and accurate report of the proceedings of any inquiry under the authority of an Act or a Commonwealth Act or under the authority of the Crown in right of the Territory or of the Governor-General in Council, or an extract from or abstract of any such proceedings, or a copy, or an extract from, or abstract of, any official report made by the person by whom the inquiry was held;
- (g) a notice or report issued by an administrative unit, a Department of State of the Commonwealth, a Department of the Australian Public Service, a public servant, an officer holding office under a law in force in the ACT, an authority or instrumentality established by or under such a law or a member of the Australian Federal Police, being a notice or report issued for the information of the public and published with the consent of the administrative unit, department, public servant, officer, authority, instrumentality or member, as the case may be;
- (h) a fair and accurate report of the proceedings of any local authority, board, or body of trustees, or other persons, duly constituted under the provisions of any law in force in the ACT for the discharge of public functions so far as the matter published relates to matters of public concern, except if neither the public nor any newspaper reporter is admitted.

A publication is said to be made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used for the publication of news.

For the publication of a report of proceedings referred to in paragraphs (b), (f), (g) and (h), it is evidence of a want of good faith if the proprietor, publisher, or editor has been requested by the person defamed to publish in the newspaper a reasonable letter or statement, by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same.

5A Publication of parliamentary reports etc

- (1) Subject to subsection (2), in any criminal proceedings or civil action in respect of the publication of matter carrying a defamatory imputation it is a defence that the publication was of—
 - (a) a report, paper, votes or proceedings published by order, or under the authority, of a parliamentary body or a committee of a parliamentary body; or
 - (b) a copy of any such report, paper, votes or proceedings; or
 - (c) a fair extract from, or fair abstract or fair summary of, any such report, paper, votes or proceedings.
- (2) The defence referred to in subsection (1) is not available if it is proved that the defendant did not publish the matter in good faith for public information or the advancement of education.
- (3) In subsection (1):
parliamentary body means—
 - (a) the Legislative Assembly; and
 - (b) either House of the Parliament; and
 - (c) the Parliament, or a House of the Parliament, of a State; and
 - (d) the Legislative Assembly of the Northern Territory.

6 Privilege not affected by publication under contract

In any criminal proceedings or civil action against any person or corporation in respect of the publication of any matter, the publication may be deemed to be privileged, notwithstanding that

the publication is made in pursuance of a contract whereby the person or corporation undertakes for valuable consideration to supply information to the person to whom the publication is made, if—

- (a) the publication is in answer to an inquiry made in pursuance of the contract; and
- (b) the matter published is relevant to the subject of the inquiry; and
- (c) the manner and extent of the publication do not exceed what is reasonably sufficient for the occasion; and
- (d) the person making the publication is not actuated by ill will to the person defamed, or by any other improper motive; and
- (e) the person making the publication has reasonable ground to believe the matter published to be true.

Mitigation of damages

7 Compensation in other actions provable in mitigation

At the trial of an action for a libel, the defendant may give in evidence, in mitigation of damages, that the plaintiff has already recovered, or has brought actions for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which the action has been brought.

Summary proceedings

8 Evidence before court of summary jurisdiction

If the criminal proceedings are commenced against any person in respect of the printing or publishing of a libel, the court may receive evidence as to any matter that under this or any other law in force in the ACT, or otherwise might be given in evidence by way of defence by the person charged on his or her trial on information or

indictment, and the court if of opinion after hearing the evidence, that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

9 Summary conviction for libel

- (1) If the court is, on the hearing of a criminal proceeding against any person for the publication of a libel, of opinion that though the person charged is shown to have been guilty, the libel was of a trivial character, and that the offence may be adequately punished under the powers of this section, the court shall cause the charge to be reduced into writing and read to the person charged, and shall then address a question to him or her to the following effect, ‘Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?’ and if the person assents to the case being dealt with summarily, the court may summarily convict him or her and adjudge him or her to pay a fine of not more than 5 penalty units.
- (2) In this section and section 8:
court means the Magistrates Court.

Trial, costs, and execution

10 Consolidation of actions

It shall be competent for the court or a judge, on an application by or on behalf of 2 or more defendants in actions in respect of the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of the actions, so that they shall be tried together, and after the order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel may be joined in a common action on a joint application being made by the new defendants and the defendants in the actions already consolidated.

In a consolidated action under this section, the court or jury shall assess the whole amount of the damages (if any) in one sum, but a

separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the court or jury find a verdict against the defendant or defendants in more than one of the actions so consolidated, the court or jury shall proceed to apportion the amount of damages so found between and against the said lastmentioned defendants; and the judge at the trial, if the plaintiff is entitled to the costs of the action, shall make such order as the judge may deem just for the apportionment of the costs between and against the defendants.

Supplemental

11 Name of writer of article etc to be disclosed

The proprietor of any newspaper may on the written request of any person who has commenced an action in respect of any defamatory article, letter, report, or writing in any newspaper supply to the person affected thereby the name and address of the person who supplied the article, letter, report, or writing to the newspaper, and in default of compliance with the request any person affected thereby may apply to a judge of the Supreme Court who may if he or she sees fit, after hearing the proprietor, direct that the name and address be so supplied.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

4 Amendment history

4 Amendment history

This Act was originally a NSW Act—the *Defamation (Amendment) Act 1909* No 22 (NSW).

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

Under the *Interpretation Act 1967*, s 65 (now expired) all former NSW Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former NSW Acts fully into ACT laws.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

NSW legislation

Defamation (Amendment) Act 1909 No 22

assented to 20 December 1909

commenced 20 December 1909

as amended by

Commonwealth legislation

New South Wales Acts Application Act 1984 No 41 sch 2 pt 12

notified 10 August 1984

commenced 10 August 1984

New South Wales Acts Application (Amendment) Act 1984 No 58

notified 30 October 1984

commenced 30 October 1984

Magistrates Court Ordinance 1985 No 67 sch pt 1

notified 19 December 1985

commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

Legislation after becoming Territory enactment**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 25**

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

sch 1 pt 25 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.15

notified 5 September 2001 (Gaz 2001 No S65)

commenced 5 September 2001 (s 2 (1))

4 Amendment history

The *New South Wales Acts Application Act 1984* (previously the *New South Wales Acts Application Ordinance 1984*), sch 2, pt 12 sets out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT. This endnote, therefore, only details amendments made after that date.

Publication in newspaper of matters of public interest

s 5 am 1984 No 58 s 2; 1989 No 38 sch 1; 1994 No 38 sch 1 pt 25

Publication of parliamentary reports etcs 5A ins 1984 No 58 s 2
am 1989 No 38 sch 1**Summary conviction for libel**s 9 am 1985 No 67 sch pt 1; 1998 No 54 sch; 2001 No 56
amdt 3.248

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Ord 1989 No 38	31 July 1992

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

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