



Australian Capital Territory

Defamation Act 1901 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 Act 1901* 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.

Amendments incorporated to
5 September 2001



Australian Capital Territory

Defamation Act 1901

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Amendments incorporated to
5 September 2001



Australian Capital Territory

Defamation Act 1901

An Act to consolidate the statutes relating to defamation

Part 1 Preliminary

Section 1

Part 1 Preliminary

1 Name of Act

This Act is the *Defamation Act 1901*.

Part 2 Civil proceedings

3 **Right of action for oral slander**

- (1) The right of action for oral slander shall extend to all defamatory words for which an action might have been maintained in NSW before 24 August 1847 if such words had been reduced into writing.
- (2) Subject to the provisions of this Act, all the rules in force relating to actions for written slander, so far as they are applicable, shall be deemed to apply to actions for such defamatory words.

4 **Proviso where plaintiff's character not likely to be injured**

- (1) On the trial of any action for defamatory words not imputing an indictable offence, the court or jury may, if the defendant has pleaded that the words set forth in the statement of claim were spoken on an occasion when the plaintiff's character was likely not to be injured thereby, consider whether the words were spoken on such an occasion.
- (2) If the court or jury are of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby, they may find a verdict for the defendant.

5 **Evidence of apology admissible in mitigation**

In any action for defamation, the defendant may (after notice in writing of his intention so to do duly given to the plaintiff at the time of filing or delivering the defence in such action) give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so in case the action has been commenced before there was an opportunity of making or offering such apology.

6 Truth no defence unless public benefit

- (1) In any action for defamation, whether oral or otherwise, the truth of the matters charged shall not amount to a defence to such action unless it was for the public benefit that the said matters should be published.
- (2) Where the truth of the said matters is relied upon as a defence to such action, it shall be necessary for the defendant in his defence to allege that it was for the public benefit that the said matters should be published, and the particular fact or facts by reason whereof it was for the public benefit that they should be published.
- (3) Unless the said allegation is made out to the satisfaction of the court or jury as well as the truth of the said matters, the plaintiff shall be entitled to recover a verdict with such damages as the court or jury thinks proper.

7 Payment into court

In any action for defamation, the defendant or one or more of several defendants, may pay into court a sum of money by way of compensation, satisfaction, and amends.

8 Defence of apology and payment into court

- (1) In an action for a libel contained in any public newspaper or other periodical publication, the defendant may plead that such libel was inserted in such newspaper or publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or publication a full apology for the said libel, or (if such newspaper or publication is ordinarily published at intervals exceeding one week) had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff.
- (2) The defendant, upon filing a defence under subsection (1), may pay into court a sum of money by way of amends for the injury sustained by the publication of such libel.

9 Costs on verdict for less than \$4

If, in any action for defamation, a verdict is returned in favour of the plaintiff for damages in any sum less than \$4, the plaintiff shall have judgment to recover such sum only, and shall not have judgment to recover any costs, unless the judge in any case of libel certifies that the words charged as defamatory were published without reasonable grounds or excuse.

Part 3 Criminal proceedings

10 Libel with intent to extort money

(1) Whosoever—

- (a) publishes or threatens to publish any libel upon any other person; or
- (b) directly or indirectly threatens to print or publish, or directly or indirectly proposes to abstain from printing or publishing, or directly or indirectly offers to prevent the printing or publishing of any matter or thing touching any other person;

with intent—

- (c) to extort any money or security for money, or any valuable thing from such or any other person; or
- (d) to induce any person to confer upon or procure for any person any appointment or office of profit or trust,

commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

(2) Nothing herein contained shall in any manner alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings.

11 Malicious publication of false defamatory libel

Whosoever maliciously publishes any defamatory libel, knowing the same to be false, commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

12 Malicious publication of defamatory libel

Whosoever maliciously publishes any defamatory libel commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

13 Plea of truth and public benefit

- (1) On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as is hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters should be published.
- (2) To entitle the defendant to give evidence of the truth of the said matters as a defence to such indictment or information, it shall be necessary for the defendant in pleading to the said indictment or information to allege—
 - (a) the truth of the said matters in the manner now required in pleading the truth of matters under section 6 in an action for defamation; and
 - (b) that it was for the public benefit that the said matters should be published; and
 - (c) the particular fact or facts by reason whereof it was for the public benefit that the said matter should be published.
- (3) To such plea, the prosecutor may reply generally denying the whole thereof.

14 Court may consider whether guilt aggravated by plea

If after such plea, the defendant is convicted on such indictment or information, the court in pronouncing sentence may consider whether the guilt of the defendant is aggravated or mitigated by the said plea and by the evidence given to prove or to disprove the same.

15 Truth not a defence except under plea of justification

The truth of the matters charged in the alleged libel shall in no case be inquired into unless the defendant has pleaded to the indictment or information as provided in section 13.

16 Plea of not guilty available

In addition to such plea, the defendant may plead a plea of not guilty.

17 Defence of absence of authority, knowledge etc

Where, upon the trial of any indictment or information for the publication of a libel, evidence has been given under the plea of not guilty which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and did not arise from want of due care or caution on his part.

18 Costs on private prosecution for libel

In case of any indictment or information by a private prosecutor for the publication of any defamatory libel—

- (a) if judgment is given for the defendant—the defendant shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information; or
- (b) if, upon a special plea to such indictment or information of the truth of the matters charged, the issue be found for the prosecutor—the prosecutor shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea,

such costs to be taxed by the proper officer of the court before which the said indictment or information is tried.

Part 5 Remedies of judgment creditors

23 Execution against presses etc

When any person is convicted either in a civil or a criminal proceeding of printing or publishing a defamatory article, the plaintiff or prosecutor in whose favour judgment is given may, under his writ of execution, levy the costs, damages, penalty, and expenses named therein, out of the whole of the types, presses or printing materials whatsoever belonging to the person whose types, presses or printing materials, or any part thereof, have been used in printing such defamatory article, as well as out of the property of the defendant on the record.

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

3 Legislation history

3 Legislation history

This Act was originally a NSW Act—the *Defamation Act 1901* 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 Act 1901 No 22

assented to 26 October 1901

commenced 26 October 1901

as amended by

Commonwealth legislation

New South Wales Acts Application Act 1984 No 41 sch 2 pt 11

notified 10 August 1984

commenced 10 August 1984

Legislation after becoming Territory enactment

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 3.14

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 11 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.

Name of Act

s 1 sub 2001 No 56 amdt 3.243

Right of action for oral slander

s 3 am 2001 No 56 amdt 3.244

Libel with intent to extort money

s 10 am 1998 No 54 sch; 2001 No 56 amdt 3.245

Malicious publication of false defamatory libel

s 11 am 1998 No 54 sch; 2001 No 56 amdt 3.246

Malicious publication of defamatory libel

s 12 am 1998 No 54 sch; 2001 No 56 amdt 3.247

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	Act 1984 No 41	31 July 1992

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

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