

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Defamation Bill 1999

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1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Defamation Bill 1999

A BILL

FOR

An Act about defamation, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts
as follows:

PART 1—PRELIMINARY

1 Name of Act

5 This Act is the *Defamation Act 1999*.

2 Commencement

(1) Section 1 and this section commence on the day this Act is notified
in the Gazette.

(2) The remaining provisions commence on a day or days fixed by the
10 Minister by notice in the Gazette.

(3) However, if a provision has not commenced within 6 months after
the day mentioned in subsection (1), it commences on the first day after
that period.

3 Definitions—the dictionary

The dictionary at the end of this Act is part of this Act.

5 *Note 1* The dictionary defines certain words and expressions, and includes references (*signpost definitions*) to other words and expressions elsewhere in this Act or in other legislation.

For example, the signpost definition '*aggrieved person*—see section 5' means that the expression 'aggrieved person' is defined in section 5 and the definition applies to other provisions of this Act.

10 *Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

4 Notes

(1) A note in this Act is explanatory and is not part of this Act.

(2) In this section—

15 *note* includes material enclosed in brackets in section headings.

Note For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- 1901: *Defamation Act 1901*
- 20 • 1909: *Defamation (Amendment) Act 1909*
- UK: *Defamation Act 1996* (UK)

PART 2—RESOLUTION OF DISPUTES WITHOUT LITIGATION

5 Application of pt 2

This Part applies if a person (the *publisher*) publishes matter (the *matter in question*) that is or may be defamatory of another person (the *aggrieved person*).

6 Offer to make amends (UK s 2)

(1) The publisher may offer to make amends to the aggrieved person.

(2) The offer may be in relation to—

- (a) the matter in question generally; or
- (b) a particular defamatory meaning that the publisher accepts that the matter in question has (a *qualified offer*).

(3) The offer to make amends—

- (a) must be in writing; and
- (b) must be readily identifiable as an offer to make amends under this section; and
- (c) must include an offer to publish, or join in publishing, a reasonable correction (if any) of the matter in question; and
- (d) must include an offer to publish, or join in publishing, a reasonable apology (if any) in relation to the matter; and
- (e) if material containing the matter has been given to someone else by the publisher or with the publisher's knowledge—must include an offer to take, or join in taking, reasonable steps to tell the other person that the matter is or may be defamatory of the aggrieved person; and
- (f) must state whether it is a qualified offer and, if so, set out the defamatory meaning in relation to which it is made; and
- (g) may include particulars of any correction or apology made, or action taken, before the date of offer; and
- (h) may include an offer to pay the expenses incurred by the aggrieved person because of the publication of the matter.

(4) The publisher may not make an offer to make amends about the matter in question after serving a defence in an action brought against the publisher by the aggrieved person in relation to the matter.

(5) If 2 or more persons published the matter in question, an offer to make amends by 1 or more of them does not affect the liability of the other or others.

(6) An offer to make amends may be withdrawn before it is accepted and the renewal of a withdrawn offer is to be regarded as a new offer.

7 What is a reasonable offer to make amends?

5 In deciding whether an offer to make amends is reasonable, regard is to be had to any correction or apology published before any trial arising out of the matter in question, including the extent to which the correction or apology is brought to the attention of the audience of the matter in question having regard to—

- 10 (a) the prominence given to the correction or apology as published in comparison to the prominence given to the matter in question as published; and
- (b) the period that elapses between publication of the matter in question and publication of the correction or apology.

8 Acceptance of offer to make amends

15 (1) If an offer to make amends is accepted, the Supreme Court may order the publisher to pay the aggrieved person the costs incurred by the aggrieved person in accepting and performing the agreement constituted by acceptance of the offer (the *amends agreement*).

20 (2) If a question arises about what is to be done to perform the amends agreement, the court may decide the question on the application of either party.

(3) If the publisher performs the amends agreement, the aggrieved person must not begin or continue an action against the publisher in relation to the matter in question.

25 **9 False or misleading statement in correction**

The publisher must not knowingly make a statement in a correction published in purported compliance with the amends agreement that is false or misleading in a material particular.

Maximum penalty: 200 penalty units.

30 **10 Offer to make amends not accepted**

(1) If an offer to make amends is made in relation to the matter in question but is not accepted, it is a defence to an action against the publisher in relation to the matter if—

- 35 (a) the publisher made the offer as soon as practicable after becoming aware that the matter is or may be defamatory; and
- (b) at any time before the trial the publisher was ready and willing, on acceptance of the offer by the aggrieved person, to perform the terms of the offer; and
- (c) in all the circumstances the offer was reasonable.

- 5 (2) If the aggrieved person does not promptly accept a reasonable offer to make amends in relation to the matter in question and an action is brought by the aggrieved person against the publisher in relation to the matter, the Supreme Court may order the aggrieved person to pay the costs of the publisher in the action, including costs on an indemnity basis.

11 Order to vindicate reputation if offer not made

- 10 (1) If an offer to make amends is not made, or no reasonable offer of amends is made, in relation to the matter in question, the aggrieved person may apply to the Supreme Court for an order to vindicate his or her reputation.

(2) The order may only be sought if the aggrieved person has given the publisher at least 7 days written notice of intention to apply to the court for an order to vindicate his or her reputation.

- 15 (3) The notice must contain sufficient information to identify the matter in question.

(4) An order under subsection (1) does not prevent the aggrieved person bringing an action.

PART 3—RULES GOVERNING LITIGATION OF CIVIL CLAIMS

12 Application of pt 3

This Part applies in relation to an action for defamation.

13 Meaning of *published matter* in pt 3

- 5 *published matter*, in relation to an action against a defendant for the publication of matter that is or may be defamatory, means the matter so published.

14 Slander actionable without special damage (1901 s 3)

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

15 Plaintiff's character not likely to be injured (1901 s 4)

It is a defence if the defendant establishes that the circumstances of publication were such that the plaintiff was unlikely to suffer harm.

16 Application of common law defence of truth in a civil proceeding

- 15 It is a defence if the defendant establishes the truth of the published matter in accordance with the common law.

17 Publication of a proceeding of public concern (1909 s 5)

- 20 (1) It is a defence if the defendant establishes that the published matter was, or was contained in, a fair report of a proceeding of public concern.

(2) It is a defence if the defendant establishes that—

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

- 30 (3) A defence established under subsection (1) or (2) is excluded if, and only if, the plaintiff satisfies the court that the publication was not in good faith for the information of the public or the advancement of education.

(4) In this section and section 31, a *proceeding of public concern* is any of the following:

- (a) a proceeding in public of a parliamentary body;

- (b) a proceeding in public of an international organisation of any countries or of governments of any countries;
- (c) a proceeding in public of an international conference at which governments of any countries are represented;
- 5 (d) a proceeding in public of—
 - (i) the International Court of Justice, or any other judicial or arbitral tribunal, for the decision of any matter in dispute between nations; or
 - (ii) any other international judicial or arbitral tribunal;
- 10 (e) a proceeding in public of—
 - (i) a court of any country; or
 - (ii) an arbitral tribunal;
- (f) a proceeding in public of an inquiry held under the law of any country or under the authority of the government of any country;
- 15 (g) a proceeding of a learned society, or of a committee or governing body of the society, under its principal objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
 - (i) a member or members of the society; or
 - 20 (ii) a person subject by contract or otherwise by law to control by the society;
- (h) a proceeding of a sport or recreation association, or of a committee or governing body of the association, under its major objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
 - 25 (i) a member or members of the society; or
 - (ii) a person subject by contract or otherwise by law to control by the association;
- 30 (i) a proceeding of a trade association, or of a committee or governing body of the association, under its relevant objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
 - (i) a member or members of the society; or
 - 35 (ii) a person subject by contract or otherwise by law to control by the association;
- (j) a proceeding of a public meeting (with or without restriction on the persons attending) held anywhere in Australia if the proceeding relates to a matter of public interest, including the advocacy or candidature of a person for public office;
- 40 (k) a proceeding of an ombudsman of any country if the proceeding relates to a report of the ombudsman;

- (l) a proceeding in public of a law reform body of any country, or proceedings in public at an inquiry conducted by a law reform body of any country.

(5) In this section and section 31—

5 **law reform body** means a body (however described and whether or not permanent or full-time) whose functions in relation to the law of a country are similar to those of the Australian Law Reform Commission in relation to the law of the Commonwealth.

learned society means a body, wherever formed—

- 10 (a) the objects of which include the advancement of any art, science or religion or the advancement of learning in any field (*the principal objects*); and
- (b) that is authorised by its constitution—
- 15 (i) to exercise control over, or adjudicate on, matters connected with its principal objects; and
- (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

ombudsman includes an officer (however described) whose duties are similar to those of the ombudsman of the Territory.

20 **sport or recreation association** means a body, wherever formed—

- (a) the objects of which include the promotion of any game, sport, or pastime to the playing of which or exercise of which the public is admitted as spectators or otherwise and the promotion or protection of the interests of persons connected with the game, sport, or pastime (*the major objects*); and
- 25 (b) that is authorised by its constitution—
- (i) to exercise control over, or adjudicate on, matters connected with the game, sport, or pastime; and
- 30 (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

trade association means a body, wherever formed—

- (a) the objects of which include the promotion of any calling, that is to say, a trade, business, industry or profession and the promotion or protection of the interests of persons engaged in any calling (*the relevant objects*); and
- 35 (b) that is authorised by its constitution—
- (i) to exercise control over, or adjudicate on, matters connected with a calling or the conduct of persons engaged in the calling; and
- 40

- (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

18 Publication of public document (1909 s 5A)

5 (1) It is a defence if the defendant establishes that the published matter was contained in—

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

10 (2) For subsection (1), if a report or other document under the law of a country would be a public document except for compliance with a provision of that law about—

- (a) the form of the report or document; or
(b) the content of the report or document; or
(c) the time within which the report or document is prepared, or presented, submitted, tabled or laid to or before an entity;

15 the report or document is a public document despite that noncompliance.

(3) A defence established under subsection (1) is excluded if, and only if, the plaintiff satisfies the court that the published matter was not published in good faith for the information of the public or the advancement of education.

20 (4) In this section and section 31, a reference to the *publication* of matter includes publication in a way that the matter will become accessible or will be broadcast or transmitted to other people through a computer network.

(5) In this section and section 31—

25 *Australian jurisdiction* means the Territory, the Commonwealth or a State or another Territory.

Australian record or document means a record or document kept—

- 30 (a) by an Australian jurisdiction; or
(b) by a statutory authority of an Australian jurisdiction; or
(c) by a court of an Australian jurisdiction; or
(d) under legislation of an Australian jurisdiction.

entity includes a parliamentary body.

judgment includes a decree or order.

public document means any of the following:

- 35 (a) a report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a

parliamentary body published under the authority of the body;

- 5 (b) a judgment of a court of any country in a civil proceeding, or a record of the court relating to the judgment or to its enforcement or satisfaction;
- (c) a report, or other document, that under the law of any country—
- 10 (i) is authorised to be published; or
- (ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body;
- (d) a document issued by the government or a local government of a country, or by an officer, employee or agency of the country or local government, for the information of the public;
- 15 (e) an Australian record or document that is open to inspection by the public;
- (f) a report of a tribunal about its decision and the reasons for its decision.

19 Publication under contract (1909 s 6)

- 20 (1) It is a defence if the defendant establishes that the publication of the published matter was a reasonable publication under a contract.
- (2) For subsection (1), a publication is reasonable if—
- (a) the publication was in answer to an inquiry made under the contract; and
- 25 (b) the published matter was relevant to the subject of the inquiry; and
- (c) the manner and extent of the publication were reasonable; and
- (d) the defendant was not motivated by ill will to the plaintiff, or by any other improper motive; and
- 30 (e) the defendant had, at the time of publication, reasonable grounds to believe the published matter to be true.

20 Evidence of apology admissible in mitigation (1901 s 5)

- (1) If an offer to make amends has not been made, the defendant may mitigate damages by giving evidence of any apology made or offered by
- 35 the defendant to the plaintiff before the beginning of the action or as soon as practicable afterwards.
- (2) The defendant may give the evidence only if the defendant gave written notice to the plaintiff of his or her intention to do so when filing or delivering his or her defence in the action.

21 Payment into court (1901 s 7)

The defendant, or 1 or more of several defendants, may pay into court an amount by way of compensation, satisfaction and amends.

22 Defence of apology and payment into court (1901 ss 8 (1))

5 The defendant may plead that matter that is or may be a libel was published without actual malice and without gross negligence, and that before the action was begun or as soon as practicable afterwards, the defendant published a full apology for the libel or, if this was not possible, had offered to publish the apology in a way to be selected by the plaintiff.

10 **23 Defence—defendant not negligent**

(1) It is a defence if the defendant establishes that the published matter (other than any published matter imputing criminal behaviour) was not published negligently.

(2) For subsection (1), it is sufficient if the defendant establishes—

15 (a) that if the plaintiff had proceeded against the defendant in an action for negligence—

(i) the defendant would not have owed a duty of care to the plaintiff; or

20 (ii) the defendant would not have breached a duty of care owed to the plaintiff; or

(b) that, because of the publication, the plaintiff did not suffer or is not likely to suffer harm; or

(c) the defendant took reasonable steps to ensure the accuracy of the publication.

25 **24 Compensation etc provable in mitigation (1909 s 7)**

At the trial, the defendant may give evidence, in mitigation of damages, that the plaintiff has already recovered, or has brought an action for damages, or has received or agreed to receive compensation in relation to the published matter.

30 **25 Damages**

In deciding the amount of damages to be awarded, a court must—

(a) ensure that there is an appropriate and rational relationship between the relevant harm and the amount of damages awarded; and

35 (b) take into account the ordinary level of general damages component in personal injury awards in the Territory.

26 Disclosure of name of contributor (1909 s 11)

5 (1) If the published matter is an article, letter, report, or writing published in a newspaper, the plaintiff may ask the editor of the newspaper to give to the plaintiff the name and address of the person who supplied the article, letter, report, or writing to the newspaper.

(2) The editor may comply with the request.

(3) If the editor does not comply with the request within 14 days, the plaintiff may apply to a judge who may, after hearing the proprietor, direct that the name and address be given to the person.

10 (4) In this section—

newspaper includes any newspaper, review, magazine, or other writing or print, published periodically.

PART 4—CRIMINAL PROCEEDINGS

Division 4.1—Defamatory libel

27 Application of div 4.1

5 This Division applies in relation to a prosecution for the malicious publication of a defamatory libel.

28 Meaning of *victim* in div 4.1

In this Division—

victim, in relation to matter that has been published, means the person, or any of the persons, who is or may be defamed by the matter.

10 29 Malicious publication of defamatory libel (1901 s 11 and s 12)

A person must not maliciously publish a defamatory libel (whether or not the person knows it is false).

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

30 Beginning of prosecution (1909 s 4)

15 (1) A prosecution may only be begun with the order of a judge.

(2) An application for an order may only be made on notice to the person accused.

(3) The person accused must be given an opportunity of being heard against the application.

20 31 Publication of matters of public concern (1909 s 5)

(1) It is a defence if the defendant establishes that the publication by the defendant was—

(a) a fair report of a proceeding of public concern; or

25 (b) a fair copy of a public document or a fair summary of, or a fair extract from, a public document;

made by the defendant in good faith for the information of the public.

(2) For subsection (1), if a report or other document under the law of a country would be a public document except for compliance with a provision of that law about—

30 (a) the form of the report or document; or

(b) the content of the report or document; or

(c) the time within which the report or document is prepared, or presented, submitted, tabled or laid to or before an entity;

the report or document is a public document despite the noncompliance.

(3) In this section—

entity—see subsection 18 (5).

proceeding of public concern—see subsection 17 (4).

5 *public document*—see subsection 18 (5).

publication—see subsection 18 (4).

32 Publication under contract (1909 s 6)

(1) It is a defence if the defendant establishes that the publication by the defendant was a reasonable publication under a contract.

10 (2) For subsection (1), a publication is reasonable if—

(a) the publication was in answer to an inquiry made under the contract; and

(b) the matter published was relevant to the subject of the inquiry; and

15 (c) the manner and extent of the publication were reasonable; and

(d) the defendant was not motivated by ill will to the victim, or by any other improper motive; and

(e) the defendant had, at the time of publication, reasonable grounds to believe the matter to be true.

20 **33 Plea of truth and public benefit (1901 s 13)**

(1) The defendant may only give evidence of the truth of the matter charged as a defence if the defendant, in pleading to the indictment or information, alleges—

25 (a) that it was for the public benefit that the matter should be published; and

(b) the facts that provide the basis for the public benefit; and

(c) the truth of the facts.

30 (2) If the defendant pleads as provided in subsection (1), the truth of the matters charged may be inquired into, but is a defence only if it was for the public benefit that the matter should be published.

(3) The prosecutor may reply generally to the plea by denying the whole of it.

34 Effect of plea and evidence (1901 s 14)

35 If the defendant is convicted after pleading as provided in section 33, the court in sentencing the defendant may consider whether the guilt of

the defendant is aggravated or mitigated by the plea and by the evidence given to prove or to disprove the plea.

35 Truth as a defence (1901 s 15)

5 The truth of the matters charged in the alleged libel may only be inquired into if the defendant has pleaded as provided in section 33.

36 Plea of not guilty (1901 s 16)

In addition to the plea provided for in section 33, the defendant may plead not guilty.

37 Defence of absence of authority, knowledge etc (1901 s 17)

10 If, at a trial, evidence is given under the plea of not guilty that establishes a presumptive case of publication against the defendant by someone under the defendant's authority, the defendant may prove that the publication was made without the defendant's authority, consent, or knowledge, and did not arise from lack of appropriate care or caution by
15 the defendant.

38 Defence—defendant not negligent

(1) It is a defence in relation to the publication of matter that is or may be defamatory (other than any matter imputing criminal behaviour) if the defendant establishes that he or she was not negligent in publishing the
20 matter.

(2) For subsection (1), it is sufficient if the defendant establishes—

- (a) that if the victim had proceeded against the defendant in an action for negligence—
 - 25 (i) the defendant would not have owed a duty of care to the victim; or
 - (ii) the defendant would not have breached a duty of care owed to the victim; or
- (b) that, because of the publication, the victim did not suffer or is not likely to suffer harm; or
- 30 (c) the defendant took reasonable steps to ensure the accuracy of the publication.

Division 4.2—Other libels and related offences

39 Libel etc with intent to extort money or obtain a benefit (1901 s 10)

35 (1) A person must not publish, or threaten to publish, a libel with intent to extort money or to induce or procure an appointment.

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

(2) A person must not directly or indirectly threaten to print or publish anything affecting a person with intent to extort money or to induce or procure an appointment.

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

5 (3) A person must not directly or indirectly propose to abstain from printing or publishing anything affecting a person with intent to extort money or to induce or procure an appointment.

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

10 (4) A person must not directly or indirectly offer to prevent the printing or publishing of anything affecting a person with intent to extort money or to induce or procure an appointment.

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

(5) This section does not affect any other law relating to the sending or giving of threatening letters or writings.

15 (6) In this section—

appointment includes an office of profit or trust.

money includes security for money or valuable thing.

Division 4.3—Summary proceedings

40 Application of div 4.3

20 This Division applies in relation to a prosecution for an offence against this Part.

41 Dismissal of case (1909 s 8)

25 (1) If, after hearing the evidence against the defendant, the Magistrates Court is of the opinion that there is a strong or probable presumption that the defendant would not be convicted on the evidence, it may dismiss the case.

(2) In this section—

30 *evidence* means evidence about any matter that, under this or any other Territory law, might be given in evidence by way of defence by the defendant.

42 Summary conviction (1909 s 9)

(1) This section applies if the Magistrates Court, after hearing the evidence against the defendant, is of the opinion that—

- 35 (a) the defendant is guilty; and
(b) the libel was of a trivial character; and

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- (c) the case can properly be disposed of summarily; and
- (d) the defendant consents to the case being so disposed of.

(2) The court may sentence or otherwise deal with the defendant according to law.

- 5 (3) If the court disposes of a case summarily under this section, it may impose a maximum fine of 5 penalty units.

PART 5—MISCELLANEOUS

43 Scope of defences not limited

A defence under this Act is additional to any other defence available to the defendant and does not limit any other defence.

5 **44 Time not to be enlarged except by leave**

The time for delivering, amending, or filing any pleading or document in an action for defamation in the Supreme Court may be enlarged only with the leave of the court.

45 Repeal and consequential amendments

10 (1) The *Defamation Act 1901* and the *Defamation (Amendment) Act 1909* are repealed.

(2) The *Interpretation Act 1967* is amended by omitting from Part 1 of Schedule 1 items 42 and 62.

15 (3) Section 22 of the *Supreme Court Act 1933* is amended by adding at the end the following subsection:

“(3) The court may not make an order under this section in an action for libel or slander.”.

DICTIONARY

(See s 3)

action means an action for defamation.

aggrieved person, for Part 2 (Resolution of disputes without litigation)—see section 5.

amends agreement, for Part 2 (Resolution of disputes without litigation)—see subsection 8 (1).

country includes a federation, and a state, territory, province or other part of a federation.

defamation means libel or slander.

matter in question, for Part 2 (Resolution of disputes without litigation)—see section 5.

offer to make amends means an offer under section 6.

parliamentary body means any of the following:

- (a) a parliament or legislature of any country;
- (b) a house of a parliament or legislature of any country;
- (c) a committee of a parliament or legislature of any country;
- (d) a committee of a house or houses of a parliament or legislature of any country.

published matter, for Part 3 (Rules governing litigation of civil claims)—see section 13.

publisher, for Part 2 (Resolution of disputes without litigation)—see section 5.

qualified offer, for Part 2 (Resolution of disputes without litigation)—see subsection 6 (2).

tribunal means a tribunal of any country.

victim, for Division 4.1 (Defamatory libel)—see section 28.

Endnote

Penalty units

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

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