

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

NEW SOUTH WALES ACTS APPLICATION

(AMENDMENT) ORDINANCE 1984

No. 58 of 1984

This Ordinance amends Part 12 of Schedule 2 to the New South Wales Acts Application Ordinance 1984 which sets out the text of the Defamation (Amendment) Act 1909 of New South Wales in its application to the A.C.T. The Ordinance inserts a new section 5A which provides a defence of qualified privilege in respect of the publication of documents ordered or authorised to be published by any Australian Parliament. The defence also extends to publication of copies, and fair extracts from such documents.

Section 5 of the applied N.S.W. Act gave qualified privilege to the publication in a newspaper only of copies of, or extracts from, reports published by or under the authority of any Australian Parliament. However, the statutory privilege did not extend to the publication by other persons of such material, and the extent of protection at common law is unclear.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the New South Wales Acts Application (Amendment) Ordinance 1984.

Section 2 amends Part 12 of Schedule 2 to the New South Wales Acts Application Ordinance 1984 by -

- (a) omitting paragraph (c) of section 5. That paragraph provides a defence for the publishers of newspapers in respect of the publication of copies or extracts of reports and papers ordered to be published by an Australian parliament. As a wider privilege in respect of the publication of such copies and extracts will be provided by new section 5A, paragraph 5(c) is no longer necessary; and
- (b) inserting a new section 5A after section 5.

Sub-section 5A(1) provides a defence in any criminal or civil defamation action in respect of the publication in the A.C.T. of -

- . a report, paper, votes or proceedings published by order or under the authority of a parliamentary body or parliamentary committee; or
- . a copy of such report, paper or votes on proceedings; or

. a fair extract, abstract or summary of any such report etc.

Sub-section 5A(2) provides the defence is defeated if the plaintiff shows that the defendant did not publish the defamatory matter in good faith for public information or the advancement of education. This means that the privilege granted by sub-section 5A(1) is a qualified privilege and may be defeated if the defendant is actuated by ill-will to the person defamed or by any other improper motive. Sub-section 5A(3) defines a parliamentary body to mean a House of any Australian Parliament.

Authorised by the Attorney-General

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