



Department of Justice and Attorney-General  
Office of the Director-General

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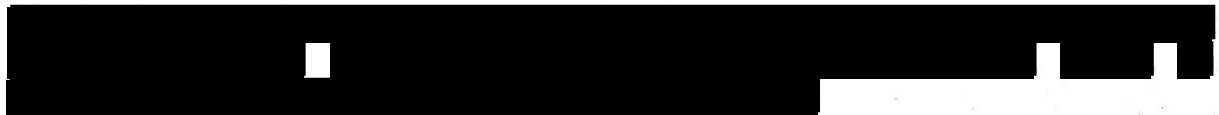
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Mr Peter Russo MP  
Chair  
Legal Affairs and Safety Committee  
[lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear Mr Russo

The Legal Affairs and Safety Committee (Committee) has requested a response from the Department of Justice and Attorney-General (DJAG) to written submissions received by the Committee as part of its inquiry into the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021.

Please find enclosed a table summarising the key issues raised in written submissions to the Committee and providing a response from DJAG.



I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Mackie".

David Mackie  
**Director-General**

Enc.

## Legal Affairs and Safety Committee

### *Inquiry into the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021*

#### Department of Justice and Attorney-General (DJAG) responses to issues raised in written submissions

The following submissions were received in relation to the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021 (the Bill):

- 1 - Confidential
- 2 - Robert Heron
- 3 - 4ZZZ Radio
- 4 - LawRight
- 5 - Queensland Law Society

Clause	Stakeholder comments	Departmental Response
<b>General</b>		
	<p><b>5 – Queensland Law Society (QLS)</b></p> <p>QLS notes that some of the reforms introduce significant changes to this area of law – in particular making serious harm an element of the cause of action, requiring a concerns notice to be given and the applicable period to have expired before someone can commence an action in a court (unless a court otherwise orders in certain circumstances), a new defence in relation to a matter related to a scientific or academic issue, and changes to limitation periods.</p> <p>The QLS indicates that the effect of these changes in Queensland and elsewhere across Australia should be monitored to ensure that any unintended consequences that arise can be identified and addressed.</p>	<p>These comments are noted.</p>

# Defamation (Model Provisions) and Other Legislation Amendment Bill 2021

Clause	Stakeholder comments	Departmental Response
<b>Serious harm and defence of triviality</b>		
6, 20	<b>3 - 4ZZZ Radio</b>  4ZZZ Radio indicates support for provisions that would see trivial claims dealt with before the need for court proceedings.	These comments are noted.
	<b>4 – LawRight</b>  LawRight states that the introduction of a serious harm threshold will hopefully discourage spurious or trivial claims and allow for a mechanism for such proceedings to be resolved promptly. LawRight observes that in its casework, it often sees relatively trivial claims commenced for ulterior or improper reasons and express hope that this provision will limit the number of these matters that progress through the court. LawRight states that it looks forward to judicial interpretation about the practical procedure and relevant factors to consider when the serious harm question is heard and determined at an early stage in the court proceedings.	These comments are noted.
<b>Pre-litigation processes</b>		
8	<b>4 – LawRight</b>  LawRight states that the introduction and improvement of the section relating to mandatory concerns notices will significantly aid the clients it assists. If independent advice is available for all parties, these amendments should help resolve a significant number of disputes without the need for proceedings to be commenced.	These comments are noted.
9	<b>3 - 4ZZZ Radio</b>	The Defamation Act currently provides that an offer to make amends can not be made if 28 days have elapsed since the

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Clause	Stakeholder comments	Departmental Response
	<p>4ZZZ Radio notes that the timeframe for responding to a concerns notice differs between the Bill (28 days) and the broadcasting standards it operates under (which provides 60 days).</p> <p>It observes that community news organisations would benefit from some flexibility in the legislation around meeting the requirement for a response within 28 days.</p> <p>4ZZZ Radio is appreciative of options for the resolution outside of litigation to maintain good relationships with local communities.</p>	<p>publisher was given a concerns notice, or a defence has been served in the action.</p> <p>The changes to section 14 of the Defamation Act, which are consistent with the <i>Model Defamation Amendment Provisions 2020</i> (MDAPs), continue to reflect the current 28 day timeframe during which it is open for the publisher to make an offer to make amends, whilst reflecting the ability of a publisher to request a further particulars notice and vary the timeframes for responding to accommodate that process.</p>
	<p><b>4 – LawRight</b></p> <p>LawRight is pleased that the MDAPs clarify the relevant timing of the offer to make amendments in line with its submissions to the Defamation Working Party, and that the amendments to section 14 (When offer to make amends may be made)' adopts the model provisions.</p>	<p>These comments are noted.</p>
<b>Public Interest Defence (section 29A)</b>		
16	<p><b>3 - 4ZZZ Radio</b></p> <p>4ZZZ Radio indicates support for a consistent and clear definition of public interest, as defined in clause 16 of the Bill, including consideration for the protection of confidential sources in defamation hearings. The existing defence of qualified privilege sets an extremely high bar for smaller broadcasters to establish (particularly due to resourcing).</p>	<p>These comments are noted.</p>



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<b>Defence of scientific or academic peer review (new section 30A)</b>		
18	<p><b>2 - Robert Heron</b></p> <p>Mr Heron states that the Bill recognises the special role professional academics perform.</p> <p>He indicates that one-point worth clarifying is how an academic journal may be authoritatively declared to not be an infamous publication so as to bring greater certainty for academics.</p> <p>Mr Heron notes that it would be prudent to list graduate research professional as Politically Exposed Persons.</p>	<p>This submission is noted.</p> <p>This clause mirrors the MDAPs to provide a defence for publishers of defamatory matter relating to a scientific or academic issue, published in a scientific or academic journal (including in electronic form) that has been subject to an independent review. A uniform approach will result in academics and scientists having greater certainty about their rights and obligations when publishing matter in peer reviewed scientific and academic journals.</p>
<b>Honest opinion defence (section 31)</b>		
19	<p><b>4 – LawRight</b></p> <p>LawRight is supportive of these changes as the amendments recognise the ways in which contextual information is made available or accessible in digital publications which will increase the accessibility of this defence for online publications.</p>	<p>These comments are noted.</p>
<b>Damages</b>		
21	<p><b>3 - 4ZZZ Radio</b></p> <p>4ZZZ Radio states that smaller broadcasters have a significantly higher risk in relation to damages than larger organisations.</p>	<p>The Bill confirms that the maximum amount provided for in section 35 of the <i>Defamation Act 2005</i> (\$421,000 indexed annually) sets a scale or range of damages, with the maximum amount to be awarded only in a most serious case. An award of aggravated damages is to be made separately to any award of damages for non-economic loss.</p>

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	<p>It notes that provisions which instruct the court to award damages based on severity is commendable but does little to minimise the risks associated with potential damages awards.</p> <p>4ZZZ Radio indicates that provisions for the fairer and more just allocation or assessment of damages, in line with the means of the publisher, would be preferable for the purposes of the Act.</p>	Damages for non-economic loss are aimed at providing compensatory damages to cover the intangible matters of consolation for hurt feelings, damage to reputation and the vindication of the plaintiff's reputation, and are not concerned with the capacity or means of the defendant to satisfy the award.
<b>Single publication rule (new section 10AB of the <i>Limitation of Actions Act 1974</i>)</b>		
30	<p><b>4 – LawRight</b></p> <p>LawRight is supportive of the sections of the MDAPs and the proposed amendments in clause 30 and the changes to the <i>Limitation of Actions Act 1974</i> which include a mechanism for a plaintiff to apply to the court to extend the relevant limitation period. The proposed amendments address its concerns and appropriately balance the protection of a plaintiff's reputation with the need to reduce the risk of 'endless' limitation periods caused by digital publication and online archiving.</p>	These comments are noted.
<b>Other</b>		
	<p><b>3 - 4ZZZ Radio</b></p> <p>4ZZZ Radio advocates for the development of a public interest defence fund to support small publishers (especially community not for profits) in defending defamation proceedings on matters of public interest.</p>	Whilst this suggestion is noted, the proposal is outside the scope of the Bill.