LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Ms SL Bolton MP
Ms JM Bush MP
Mrs LJ Gerber MP
Mr JE Hunt MP
Mr AC Powell MP

Staff present:
Ms R Easten—Committee Secretary
Ms K Longworth—Assistant Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION AMENDMENT BILL 2021

TRANSCRIPT OF PROCEEDINGS

MONDAY, 10 MAY 2021

Brisbane

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The committee met at 9.01 am.

CHAIR: Good morning. I declare open the public briefing for the Legal Affairs and Safety Committee's inquiry into the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share.

My name is Peter Russo, the member for Toohey and chair of the committee. The other committee members here with me today are: Mrs Laura Gerber, member for Currumbin and deputy chair; Ms Sandy Bolton, member for Noosa; Ms Jonty Bush, member for Cooper; Mr Jason Hunt, member for Caloundra; and Mr Andrew Powell, member for Glass House.

On 20 April 2021 the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for Prevention of Domestic and Family Violence, introduced the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021 into the parliament and referred it to the Legal Affairs and Safety Committee for consideration. The purpose of today's briefing is to assist the committee with its examination of the bill. Only the committee members and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the briefing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from the committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and that images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode.

I remind committee members that officials are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House. I also ask that responses to any questions taken on notice are provided to the committee by 3 pm on Monday, 17 May. The program for today has been published on the committee's webpage and there are hard copies available from committee staff. I now welcome representatives from the Department of Justice and Attorney-General and the Department of Transport and Main Roads who have been invited to brief the committee on the bill.

BRADLEY, Ms Imelda, Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General

FRANK, Mr Karl, Executive Director, Heavy Vehicles and Prosecutions, Land Transport Safety and Regulation, Department of Transport and Main Roads

ROBERTSON, Mrs Leanne, Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

ROTILI, Ms Jennifer, Principal Adviser, Regulatory Standards and Policy, National Heavy Vehicle Regulator

CHAIR: I invite representatives to make an opening statement, after which committee members will have some questions.

Mrs Robertson: I thank the committee for the opportunity to brief you about the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. You have already done the other introductions, Chair, and as noted we are also joined by colleagues from the Department of Transport and Main Roads who will speak to those amendments related to the heavy vehicle national law. The department has already provided a written briefing.

As the committee knows, the bill amends the Defamation Act and the Limitation of Actions Act to implement changes to the model defamation provisions agreed to by the former council of attorneys-general. The bill also repeals provisions of the Heavy Vehicle National Law and Other Legislation Amendment Act 2019 to prevent unintended operational consequences for the heavy vehicle industry. As has been flagged, I will speak to the amendments to the Defamation Act and the Limitation of Actions Act and then colleagues from the Department of Transport and Main Roads will have some opening comments about the amendments to the heavy vehicle law.

By way of background in respect of the defamation amendments, in November 2004 the former standing committee of attorneys-general endorsed model defamation provisions and thereafter each state and territory enacted legislation to implement. In Queensland, the Defamation Act commenced on 1 January 2006. In June 2018 the former council of attorneys-general agreed to reconvene the defamation working group led by the New South Wales Department of Justice to consider whether the policy objectives of those model defamation provisions remain valid and whether the provisions remain appropriate to achieve those objectives. The defamation working party undertook public consultation on a discussion paper, held several targeted stakeholder round tables and engaged with an expert panel comprised of judges, practitioners and academics, all of which informed the development of what is known as the model defamation amendment provisions.

On 27 July 2020, the former council of attorneys-general agreed that all jurisdictions would enact and commence the model defamation amendment provisions as soon as possible. At the meeting of attorneys-general on 31 March this year, attorneys-general agreed that New South Wales, South Australia, Victoria and all other jurisdictions that are able to do so will commence the MDAPs, model defamation amendment provisions, on 1 July 2021, with remaining jurisdictions to commence those provisions as soon as possible thereafter. The bill before us fulfils Queensland's commitment to introduce the model defamation amendment provisions as well as Queensland's obligations under the model defamation provisions intergovernmental agreement and ensures continued uniformity of defamation law in Australia.

I now turn to some of the more significant aspects of the defamation amendments contained in the bill and to what is known as the single publication rule. The bill introduces a single publication rule similar to section 8 of the UK Defamation Act 2013. The rule will apply where there are multiple publications of the same defamation matter by the same publisher, or an associate of the publisher, so that the one-year limitation period for each publication starts running from the date of that first publication and, for an electronic publication, from when it is uploaded or sent to the recipient. The bill enables the court to extend the limitation period for a maximum of three years where the plaintiff satisfies the court that it is just and reasonable to do so in all the circumstances of the case.

I now turn to what is known as the serious harm element contained in the bill. The bill will also introduce a serious harm element similar to section 1 of the United Kingdom act which requires the plaintiff to establish that the publication has caused, or is likely to cause, serious harm to their reputation. If the plaintiff is a corporation, the corporation must also prove that serious financial loss has been caused or is likely to be caused by the publication. Importantly, the bill includes a procedure for the court to determine whether the serious harm element is established; for instance, the relevant judicial officer is to determine the issue as soon as practicable before the trial commences unless there are circumstances justifying postponement. The serious harm threshold is aimed at encouraging the early resolution of defamation proceedings by enabling the issue to be dealt with as a threshold issue. As a result, the defence of triviality will be abolished.

Turning to the pre-litigation processes under the bill, amendments contained in the bill will: make it mandatory to issue a concerns notice prior to commencing defamation proceedings in court; formalise the requirements of a concerns notice; and provide further clarity around the 'offer to make amends' process including the required content and the time frame.

The bill also introduces two new defences. The first is a public interest defence based on the defence of publication on a matter of public interest in section 4 of the United Kingdom act which applies where the defendant can prove that the statement complained of was, or formed part of, a statement on a matter of public interest and the defendant reasonably believed that publishing the statement was in the public interest. Unlike the United Kingdom provision, the defence sets out a list of non-exhaustive factors the court may take into account when considering the defence; for example, the seriousness of the defamatory imputation, whether the matter published relates to the performance of the public functions or activities of the person and the importance of freedom of expression in the discussion of issues of public interest. As a result of the creation of this new defence, the bill amends the factors the court may take into account when considering the existing defence of qualified privilege in section 30 of the Defamation Act to ensure there is no overlap between it and the new public interest defence.

The second defence, similar to section 6 of the United Kingdom act, applies to the publication of a defamatory statement in a scientific or academic journal, provided an independent review of the statement's merits has been undertaken, for example by an editor with relevant experience. This new defence can be defeated if the plaintiff proves that the statement was not published honestly for the information of the public or the advancement of education.

The bill also clarifies that the cap on damages for non-economic loss sets a scale of damages, with a maximum to be awarded only in the most serious of cases, as was originally intended, and applies regardless of whether aggravated damages are awarded.

I note that the implementation of the model defamation amendment provisions in Queensland concludes what is known as stage 1 of the review of the model defamation provisions. A second stage of the review is currently underway and is focused on the responsibilities and liability of digital platforms for defamatory content published online as well as defences applying to disclosures of criminal conduct and misconduct in the workforce. The Attorney-General provided information on the consultation process for that stage 2 review during her introductory speech. Once our colleagues from the Department of Transport and Main Roads have concluded their opening comments, we are happy to take questions obviously in relation to the defamation amendments. I hand over now to colleagues from the Department of Transport and Main Roads.

Mr Frank: I would like to thank the committee for the opportunity to brief you on the heavy vehicle national law amendments contained within the bill. By way of background, operational provisions of the Heavy Vehicle National Law Act 2012 commenced on 10 February 2014. The act provides a single national law for the consistent regulation of heavy vehicle operations across most of Australia and establishes the National Heavy Vehicle Regulator to administer the heavy vehicle national law contained in the schedule to the act.

Queensland, as host jurisdiction, must first pass national law amendments before they can be applied nationally by other participating jurisdictions. The bill is introducing amendments to repeal two uncommenced provisions from the Heavy Vehicle National Law and Other Legislation Amendment Act 2019. Sections 10 and 11 of the act are due to commence on 27 September 2021. These provisions amend section 96—compliance with mass requirements—and section 102—compliance with dimension requirements—of the national law respectively. They were intended to address enforcement issues around the introduction of specified performance based standards, or PBS, vehicles on 1 October 2018. This initiative allowed specified PBS vehicles operating at general mass limits greater access to the road network without the need for an individual permit.

The PBS scheme itself provides industry with opportunities to increase heavy vehicle productivity by exceeding conventional mass and dimension limits, provided the vehicle's performance is assessed as meeting or exceeding safety standards, and conventional axle masses are not exceeded. Currently, PBS mass and dimension limits continue to apply to a PBS vehicle detected operating off-route, which means that the PBS vehicle can only be breached for being off-route, not for being overmass or overdimension. The penalty for being off-route is considerably lower than the penalties for being overmass or overdimension.

The effect of sections 10 and 11 is that PBS vehicles detected operating off-route will lose their PBS vehicle approved mass and dimension limits. The prescribed or lower mass dimension limits under the Heavy Vehicle (Mass, Dimension and Loading) National Regulation would apply to the vehicle instead, as happens with all other vehicles whether PBS or not. Although intended to create parity, the amendment would result in unintended adverse and inconsistent enforcement outcomes for PBS vehicles found off-route compared with other vehicle classes. This is because PBS vehicles on-route may be loaded to exceed their prescribed mass limits by many tonnes. When they breach prescribed limits by virtue of being off-route, their excess mass puts them into a much more serious offence category, punishable by higher penalties and requiring court attendance instead of paying an infringement notice. PBS vehicles would also be subject to additional enforcement powers, such as a direction not to move the vehicle until the breach has been rectified or to move it to a safe location.

Where the breach is a dimension breach, due to the construction of a PBS vehicle rectification of that breach may not be actually possible. For non-PBS vehicles, a dimension breach might be rectified by removing part of the load or detaching a trailer, whereas that cannot be the case necessarily for PBS vehicles. As PBS vehicles pose the same risk to infrastructure as non-PBS vehicles when travelling on roads not assessed or approved for their use, the same penalties for breach of general mass and dimension requirements should apply.

The unintended consequences and issues identified are not solely the result of sections 10 and 11, but they exacerbate existing anomalies and inconsistencies within the current Heavy Vehicle National Law Act. It has become apparent that enforcement of the provisions would present difficulties

also for roadside compliance officers because of the complexity of the PBS vehicle approvals, gazetted notices applying to PBS vehicles, and the new specified PBS vehicle definition. Officers would be required to have targeted training in national policy to enforce the law in a consistent and efficient way.

Due the complexity of the access arrangements in the HVNL, it was determined that there was insufficient time to develop a nationally agreed policy and training approach that would ensure that further unintended consequences were not created. As a result, ministers at the 20 November 2020 Infrastructure and Transport Ministers' Meeting agreed to repeal sections 10 and 11 and have the issues addressed in a more fundamental and holistic way as part of the current Heavy Vehicle National Law Review, which is being led by the National Transport Commission. The repeal of sections 10 and 11 are strongly supported by industry as well to retain that status quo and prevent significant and unfair disproportionate consequences for heavy vehicle operators. Thank you for your time and I welcome any questions you may have as well.

Mrs GERBER: I am interested to hear from the Department of Justice and Attorney-General a bit further in relation to how the bill will impact social media, particularly when we are talking about the addition of the two new defences in relation to public interest, particularly perhaps the first limb around publication of a matter of public interest, and then also in relation to the serious harm threshold. Can you talk us through any impact it might have on social media publications?

Ms Bradley: I can talk about the issues generally in terms of serious harm. The first one was—

Mrs GERBER: The first limb essentially of the new defence, being publication of public interest matters.

Ms Bradley: I can talk about them generally. In terms of the implications for social media, that is complicated by the fact that the stage 2 reviews are the ones that deal with the digital platforms. That is more to do with the liability of those who run the platforms. In terms of the comments that I make, they would be relevant as between the parties. Say, for example, if Mrs X is alleged to have defamed Mrs B, the comments that I make would be relevant to the communications between themselves. The other issues about digital platforms are much more complicated and that is why they have been part of a separate stage.

Mrs GERBER: If you limit it to that, that would be really great.

Ms Bradley: In relation to serious harm, during the review concerns were expressed by stakeholders that defamation law is increasingly used for trivial, insignificant and vexatious claims. Currently there is no obligation on the plaintiffs to prove that harm was caused by the defamatory imputation; however, a defendant can rely on the defence of triviality where they can prove the circumstances of the publication were such that the plaintiff was unlikely to sustain any harm. Stakeholder feedback on an exposure draft of the model defamation amendment provisions was generally supportive of the introduction of the serious harm element. Under the proposed section, it would be incumbent on the plaintiff to prove the threshold issue that they suffered serious harm.

Further, to ensure the introduction of this new element achieves the policy objective of enabling minor and insignificant matters to be dispensed with early in the proceedings, it is proposed that, where possible, it should be determined as a preliminary issue before the conduct of a potentially expensive and lengthy trial. This will enable defendants to bring interlocutory applications on the issue early in the proceedings with a view to dismissing minor disputes. It is expected the introduction of the new element will act as a deterrent to plaintiffs considering bringing actions where the matters are trivial, minor or vexatious or where there has not been serious harm. As a result of the serious harm element being introduced, the defence of triviality has been repealed. Were you interested in what serious harm might actually mean?

CHAIR: Yes.

Ms Bradley: Given that the serious harm element is based on the UK provision, it is expected that the Australian courts will look to the jurisprudence developed in the UK when considering whether that is established. Serious harm has been interpreted by the courts in the UK according to its common usage. There was a leading case called Lachaux v Independent Print Ltd and Evening Standard Ltd. In that case they considered that the serious harm threshold must be determined by reference to the actual facts about the impact rather than the meaning of the words having any presumption of reputational damage. This is dependent on an assessment of the actual consequences resulting from the publication and may include the size and characteristics of the relevant audience and the quality of the publication, and whether the claimant had any reputation to begin with.

The inherent tendency of the words 'to cause harm' is not on its own enough. Instead, the plaintiff is required to show that, through a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated, harm is or is likely to have been caused to the

reputation. In that particular case, the finding of serious harm was actually based on the scale of the publication, the fact that the defamatory statements had come to the attention of at least one other person in the UK known to the claimant, that the publications were likely to come to the attention of others who knew the complainant and would come to know him in the future, and the gravity of the statements themselves.

Mrs Robertson: I guess the underlying message in all of that is that it really is a case-by-case basis and we are not defining it in the provisions.

Mrs GERBER: When you consider social media and the fact that a statement made on a social media platform can very easily go viral or reach an audience that perhaps it was never intended to reach—perhaps there was never any intention that that statement could reach over a million people—

Ms Bradley: Yes, that is right.

Mrs GERBER:—that definition could come into play and have consequences.

Mrs Robertson: For an individual.

Mrs GERBER: That is right—for an individual that perhaps they did not foresee in the first place.

Ms Bradley: Yes, but where matters on the internet might have gone viral but were about trivial matters, this will hopefully keep matters which are trivial out of the courts.

Mrs GERBER: Even with the abolition of the defence of triviality. The reason that defence is taken away is because the bar has essentially been raised by the addition of—

Ms Bradley: Yes, up-front; you do not wait until the end of the matter and then say that it was trivial, after being heard and all the costs. That was the rationale.

Mrs GERBER: Very helpful, thank you.

Ms Bradley: In terms of the public interest, there is another defence under section 30 of the Defamation Act for qualified privilege. It covers situations where there is a legal or moral duty to make statements that might otherwise be defamatory and the conduct of the defendant in publishing is reasonable in the circumstances. During consultation, stakeholders expressed concern that that defence does not adequately protect public interest journalism, because it is very difficult to prove that the broad readership had an interest in knowing the particular subject matter in each case. During consultation there was a clear preference for the introduction of a new public interest defence, and the new defence is aimed at safeguarding the chilling effect that defamation can have on matters of public debate. That was the intent: if you have an article in the paper about a particular thing, the broad readership of the paper, as against a small group, might not have an interest in that.

Mrs GERBER: How does that fit into the context of social media? The broad readership of social media is everyone who wants to engage in that platform—for instance, replace 'paper' with 'Twitter'. How does that play out then?

Ms Bradley: I think that is part of the stage 2 review. In relation to, say, a straight matter between the parties—a newspaper and a plaintiff—this would enable the newspaper to argue the public interest defence under the new provisions.

Mrs GERBER: So the person who uploads to Twitter could argue the public interest defence in the same way that they could with the paper? That is what I am trying to understand. Essentially, it is the two individuals. If there is someone who uploads to Twitter and then it affects the person on the other stream of that, they are just as liable as the journalist who publishes something in a paper?

Mrs Robertson: The issues of liability that you are raising are issues that the whole stage 2 will address. They are very complex issues to do in one hit, for want of a better expression, so that is why it is in that staged approach.

Mrs GERBER: I will wait for stage 2, then.

Ms BUSH: I am also interested in stage 2. I appreciate that is probably not what you are here for today, but can you give any insight into the timings? I know that you cannot anticipate the outcome, but can you indicate what the focus of stage 2 will be on? Would you anticipate that the findings from that review might then change the proposals we are looking at in the bill in front of us?

Ms Bradley: I cannot predict the future, but it is not anticipated that that would be the case. These are all amendments that came out of consultation from stage 1, largely. Apart from some things like the first publication rule and the serious harm threshold, a lot of the changes were really to clarify the way provisions worked and to address things that people had found problematic or uncertain in practice. I would see stage 2 as building on it rather than necessarily turning it upside down.

CHAIR: What is the time frame?

Mrs Robertson: Consultation on that discussion paper that is out at the moment ends next week, on 19 May. Then the working party has to consider that. That would then come back to the meeting of attorneys for decisions. I do not have an agenda, except it is one of the priority areas for attorneys in this calendar year—defamation law.

Ms Bradley: It may depend also on whether the results of the consultation required further work to be done or further consultation.

Ms BOLTON: Has any other jurisdiction in Australia already implemented similar changes and how did they then go into their review, to that next stage?

Mrs Robertson: The genesis for this has been coming out of that forum of attorneys-general, which has had different names over the years. Imelda, you can correct me if I am wrong, but my understanding is that New South Wales, Victoria and South Australia have passed the provisions already. They have not commenced them yet. The consultation process was done through that defamation working party and that committee of experts holistically across Australia. It was a uniform exercise in that sense. Those jurisdictions have passed their legislation and the attorneys have agreed that they will commence their provisions on 1 July, and any other jurisdictions that have their legislation passed would commence then. From time to time we have what we call uniform laws—just like the heavy vehicle law, but defamation law has been done a bit differently—and attorneys meet and decide an approach, and this is an example of that.

Ms BOLTON: It would mean that that stage regarding social media would be done in a similar fashion elsewhere?

Mrs Robertson: That is correct.

Mr POWELL: Firstly, thank you, Mr Frank, for delivering that briefing with a smile on your face. You almost turned a dry subject into an enjoyable one. Can I just clarify: my summary of what you said and what I think the bill is intending is that if a vehicle is overweight, wide or long and is allowed to be because it is reaching certain performance standards it is now going to get pinged simply because it is not on the right route rather than because it is those other things? Is that correct?

Mr Frank: Correct. That is the current scenario. The intent of sections 10 and 11 was to bring it into parity with all other vehicles. If they are off-route they can also be breached for being overmass and overdimension. The problem is that it has caught all PBS vehicles—and there are some really large ones at the top of the scale—so that if they are off-route unintentionally or intentionally there would be much higher fines. It was not the intent to catch all of those vehicles.

Mr POWELL: We are just going to ping them for getting lost?

Mr Frank: For now, yes.

Mr POWELL: 'For now' while we sort it out?

Mr Frank: That is right, until the national law is reviewed, which is currently in train. That is the intent.

CHAIR: Can you explain the changes to damages for non-economic loss?

Ms Bradley: The model defamation provisions provide that, unless a situation warrants an award of aggregated damages, the maximum amount of damages for non-economic loss that may be awarded in defamation proceedings is $421,000. That is a figure that is indexed annually. Damages for non-economic loss are aimed at providing compensatory damages to cover intangible matters such as consolation for hurt feelings, damage to reputation and vindication of the plaintiff's reputation.

The amendments in the bill are in response to conflicting decisions. In Bauer Media v Wilson the Victorian Court of Appeal found that the current provision applies to make the statutory cap entirely inapplicable in circumstances that warrant aggravated damages. The result of that decision was that, if a defamation claim warrants the award of aggravated damages, the court may award any amount for non-economic loss without having regard to the cap. The bill confirms that the maximum amount provided for sets the scale or a range of damages, with the maximum amount to be awarded only in the most serious cases, and requires awards of aggravated damages to be made separately to awards of damages for non-economic loss. The scale, or the range of damages for non-economic loss, continues to apply to non-economic loss even if the aggravated damages are awarded.

Put simply, the $421,000 amount is a scale. In the most serious cases that would be the amount, and there would be a range. Now the court must separately decide if it is going to award aggravated damages. If it does so, it will then award that separately. The scale will then apply to anything which is non-aggravated.

CHAIR: Are you able to outline the key changes to the pre-litigation process—this is a double-barrelled question, forgive me—and how these changes will improve the current situation?

Ms Bradley: The main aspect of that is that the concerns notices will now be mandatory before commencing litigation, and there is detail about what has to be recorded in that particular concerns notice. There is a process also so that if insufficient information is provided, the defendant can then seek further information, and various time frames run as a result of that concerns notice timing.

The purpose of the concerns notice is actually to encourage the plaintiffs to turn their minds to the serious harm element early in the proceedings to ensure that the publishers have sufficient information to enable them to make reasonable offers to make amends. If a reasonable offer to make amends is accepted and carried out effectively, it bars the defamation action. Basically, what happens is: the concerns notice is issued, and that provides the defendant with an opportunity to make an offer to make amends, which may be taking down relevant material, offering some compensation or giving an apology. All of those things combined are designed to try to assist people in resolving disputes before things get to the court.

CHAIR: At the moment, is it the case that people are not using concerns notices and are just going straight to litigation?

Ms Bradley: Yes, it is not mandatory. The provision allows for a case where, if the court considers it just and reasonable to do so, they may still do that in the circumstances. That is very much then a matter for the court. What we are trying to do is set up a process so that people try to resolve their disputes before getting to court.

CHAIR: Does it bring mediation into the mix?

Ms Bradley: That would be more a matter in relation to pre-court proceedings, I would expect. There is nothing specific in the defamation law. The defamation law often leaves matters of procedure to the individual jurisdictions.

CHAIR: For example, with personal injury, before you can institute proceedings you have to have gone to mediation. That is not the case—

Ms Bradley: It is not mandated here, but there would be mediation processes as part of court proceedings.

Mrs GERBER: Ms Bradley, in relation to the jurisdictions that have already implemented this—so New South Wales, Victoria, South Australia—are you able to speak to how that has affected the courts as to whether it has had a positive impact—

Ms Bradley: It has not commenced there yet. This is all very new and everyone is in the process of seeking to implement. They have not had that experience yet. As we understand, it will commence on 1 July.

CHAIR: There is similar legislation before other—

Mrs Robertson: New South Wales, Victoria and South Australia have enacted their legislation but have not commenced it. Their parliaments have passed it.

CHAIR: They will commence it on 1 July?

Mrs Robertson: Yes, 1 July. The idea is that, because it is a uniform law, as many jurisdictions as possible are trying to commence on the same date.

Ms Bradley: That is to avoid forum shopping.

Mr POWELL: We tried that with the National Heavy Vehicle Regulator.

CHAIR: Those other jurisdictions you mentioned have passed it?

Mrs Robertson: They have passed it but they have not commenced—

CHAIR: They will not implement it until 1 July?

Mrs Robertson: Yes.

Mrs GERBER: Is it anticipated, though, that it will reduce the workload on the courts? It is an anticipated outcome?

Mrs Robertson: I think it is fair to say that the driver of this, apart from picking up things where the courts have interpreted differently to the original intention, is very much to try to have that impact so that disputes are actually resolved early in the piece rather than going through protracted court processes.

Ms Bradley: It is also to avoid not so much the courts but the parties themselves having to incur very high legal fees.

CHAIR: Can you give the committee any more detail in relation to the two new defences?

Ms Bradley: That was the public interest—and was it serious harm? Serious harm is not really a defence.

Mrs GERBER: The publication of an academic journal, so publication in a scientific or academic journal.

Ms Bradley: The only thing I can say in addition is that, unlike the United Kingdom, section 29—

Mrs Robertson: This is the one in relation to the academic and peer review. That applies to fair reports of proceedings of public concern. There is a defence if a defendant proves that the matter was, or was contained in, a fair report. Stakeholders noted that the provisions likely to cover presentations at scientific, academic and press conferences held to discuss matters of public interest and in many circumstances the publication of the peer reviewed and other statements in journals, and the defence of honest opinion may also apply to the statements of opinion appearing in those articles. Notwithstanding all of that, the work on this defamation reform agreed to provide a clear and easily applicable defence for academic inquiry and critical public discussion by scientists and academics to avoid the risk that there are arguments that could only be determined at trial. That is that framework where there is the concept of peer review by an editor who is suitably qualified in relation to the research publication you are going to make. That is to again avoid that front-end discussion as opposed to having a matter being determined at trial.

Mrs GERBER: Could you put that into a scenario for me so I can conceptualise it properly?

Mrs Robertson: I think it would be better if we take that on notice. I want to make sure that we do not mislead you or mislead the committee.

CHAIR: I will give the committee an opportunity to ask one last question before we close. In relation to the question on notice, I repeat again that the answer needs to be to us by 3 pm on Monday, 17 May. If there is any difficulty with that, just contact the secretariat.

Mrs Robertson: Just to clarify, we are actually using the example of the operation of that new regime in relation to the scientific and academic journal.

CHAIR: That concludes this briefing. Thank you to all the officials who have participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare this public briefing for the committee's inquiry into the Defamation (Model Provisions) and Other Legislation Amendment Bill closed.

The committee adjourned at 9.44 am.