

**DEFAMATION ACT.**

**New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. 18, 1974.**

An Act to make provisions with respect to civil proceedings for defamation including the measure of damages for defamation, with respect to offer of amends in case of innocent publication of defamatory matter, with respect to criminal liability for the publication of defamatory matter, and with respect to damages in case of failure of a prosecution for the publication of defamatory matter; to repeal the Defamation Act, 1958; to amend the Crimes Act 1900 and certain other Acts; and for purposes connected therewith. [Assented to, 10th April, 1974.]

BE

*Defamation.*

**B**E it enacted by the Queen's Most Excellent Majesty, by <sup>No. 18, 1974</sup> and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.****PRELIMINARY.**

1. This Act may be cited as the "Defamation Act, 1974". Short title.

2. This Act shall commence upon such day as may be appointed by the Governor and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Division  
of Act.

PART I.—PRELIMINARY—*ss.* 1–7.

PART II.—GENERAL—*ss.* 8–9.

PART III.—DEFENCE IN CIVIL PROCEEDINGS—*ss.* 10–45.

DIVISION 1.—*General*—*ss.* 10–13.

DIVISION 2.—*Truth*—*ss.* 14–16.

DIVISION 3.—*Absolute Privilege*—*ss.* 17–19.

DIVISION 4.—*Qualified Privilege*—*ss.* 20–23.

DIVISION 5.—*Protected Reports, etc.*—*ss.* 24–26.

DIVISION 6.—*Court Notices, Official Notices, etc.*—*ss.* 27, 28.

DIVISION 7.—*Comment*—*ss.* 29–35.

DIVISION 8.—*Offer of Amends*—*ss.* 36–45.

**PART**

No. 18, 1974

PART IV.—DAMAGES—*ss.* 46–48.PART V.—CRIMINAL DEFAMATION—*ss.* 49–53.PART VI.—SUPPLEMENTAL—*ss.* 54–57.

SCHEDULE 1.—AMENDMENTS OF ACTS.

SCHEDULE 2.—PROCEEDINGS OF PUBLIC CONCERN  
AND OFFICIAL AND PUBLIC DOCUMENTS AND  
RECORDS.Repeal of  
Defamation  
Act, 1958.

4. (1) The Defamation Act, 1958, is repealed.

(2) The law relating to defamation, in respect of matter published after the commencement of this Act, shall be as if the Defamation Act, 1958, had not been passed and the common law and the enacted law (except that Act and any enactments repealed by that Act) shall have effect accordingly.

Amend-  
ments.  
Schedule  
1.

5. Each Act specified in Column 1 of Schedule 1 is amended in the manner specified opposite that Act in Column 2 of that Schedule.

Act binds  
Crown.

6. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Interpre-  
tation.

7. (1) In this Act, "Territory of the Commonwealth" includes a territory governed by the Commonwealth under a trusteeship agreement.

(2) For the purposes of this Act, an imputation or other matter is a matter of substantial truth if, but only if, in substance it is true or in substance it is not materially different from the truth.

(3)

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(3) Where any right or liability of any person in respect of defamation passes to the executor of his will or to the administrator of his estate or to any other person, a reference in this Act which applies to the first-mentioned person extends, except in so far as the context or subject-matter otherwise indicates or requires, to that executor, administrator or other person. No. 18, 1974

(4) Where by this Act an expression used in this Act is given a meaning or has a modified meaning, that expression has a corresponding meaning in any rules of court, pleading or other document in respect of proceedings to which this Act applies, except in so far as the context or subject-matter otherwise indicates or requires.

## PART II.

## GENERAL.

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

9. (1) Where a person publishes any report, article, letter, note, picture, oral utterance or other thing, by means of which or by means of any part of which, and its publication, the publisher makes an imputation defamatory of another person, whether by innuendo or otherwise, then, for the purposes of this section— Causes of  
action.

- (a) that report, article, letter, note, picture, oral utterance or thing is a "matter"; and
- (b) the imputation is made by means of the publication of that matter.

(2)

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(2) Where a person publishes any matter to any recipient and by means of that publication makes an imputation defamatory of another person, the person defamed has, in respect of that imputation, a cause of action against the publisher for the publication of that matter to that recipient—

- (a) in addition to any cause of action which the person defamed may have against the publisher for the publication of that matter to that recipient in respect of any other defamatory imputation made by means of that publication; and
- (b) in addition to any cause of action which the person defamed may have against that publisher for any publication of that matter to any other recipient.

(3) Where a person has brought proceedings (whether in New South Wales or elsewhere) for defamation against any person in respect of the publication of any matter, that person shall not bring further proceedings for defamation against the same defendant in respect of the same or any other publication of the same or like matter, except with the leave of the court in which the further proceedings are to be brought.

(4) Rules of court may prohibit or regulate the reliance by a plaintiff in proceedings for defamation on several imputations alleged to be made by means of the same matter published by the defendant, where the several imputations do not differ in substance.

(5) Notwithstanding subsection (2), where proceedings for defamation in respect of the publication of any matter are tried before a jury, the jury shall, unless the court otherwise directs—

- (a) give a single verdict in respect of all the causes of action on which the plaintiff relies; and
- (b) if they find for the plaintiff as to more than one cause of action, assess damages in a single sum.

(6)

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- (6) This section does not affect— No. 18, 1974
- (a) any law or practice relating to special verdicts; or
- (b) the powers of any court in case of vexatious proceedings or abuse of process.
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## PART III.

## DEFENCE IN CIVIL PROCEEDINGS.

DIVISION 1.—*General.*

- 10.** This Part deals with defences in civil proceedings for defamation, but not with defences in other proceedings. Applica-  
tion.
- 11.** The provision of a defence by this Part does not of itself vitiate, diminish or abrogate any defence or exclusion of liability available apart from this Act. Common  
law de-  
fence, etc.  
Act No. 39,  
1958, s. 3  
(2).
- 12.** Where proceedings for defamation are tried before a jury, and, on the facts, there is a question whether any comment or other imputation, or any notice, proceedings or report is or relates to a matter of public interest for the purposes of this Act, that question is to be determined by the court and not by the jury. Public  
interest a  
question  
for the  
court.
- 13.** It is a defence that the circumstances of the publication of the matter complained of were such that the person defamed was not likely to suffer harm. Unlikeli-  
hood of  
harm.

## DIVISION

No. 18, 1974

DIVISION 2.—*Truth.*Interpreta-  
tion.

**14.** (1) For the purposes of this Division, an imputation is published under qualified privilege if, but only if—

- (a) the imputation is published on an occasion of qualified privilege and is relevant to the occasion; and
- (b) the manner of the publication is reasonable having regard to the imputation and to the occasion of qualified privilege.

(2) For the purposes of subsection (1), an occasion is one of qualified privilege if, but only if—

- (a) it is such an occasion under the law apart from this Act; or
- (b) the circumstances of the publication afford a defence of qualified privilege under Division 4.

Truth  
generally.  
Act No. 32,  
1912, s. 7.

**15.** (1) Notwithstanding section 11, the truth of any imputation complained of is not a defence as to that imputation except as mentioned in this section.

(2) It is a defence as to any imputation complained of that—

- (a) the imputation is a matter of substantial truth; and
- (b) the imputation either relates to a matter of public interest or is published under qualified privilege.

Truth:  
contextual  
imputa-  
tions.

**16.** (1) Where an imputation complained of is made by the publication of any report, article, letter, note, picture, oral utterance or other thing and another imputation is made by the same publication, the latter imputation is, for the purposes of this section, contextual to the imputation complained of.

(2)

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(2) It is a defence to any imputation complained of No. 18, 1974 that—

- (a) the imputation relates to a matter of public interest or is published under qualified privilege;
- (b) one or more imputations contextual to the imputation complained of—
  - (i) relate to a matter of public interest or are published under qualified privilege; and
  - (ii) are matters of substantial truth; and
- (c) by reason that those contextual imputations are matters of substantial truth, the imputation complained of does not further injure the reputation of the plaintiff.

DIVISION 3.—*Absolute Privilege.*

17. (1) There is a defence of absolute privilege for the publication of a document by order or under the authority of either House or both Houses of Parliament. Parliamentary papers.  
Act No. 39,  
1958,  
s. 11 (3).

(2) There is a defence of absolute privilege for the publication by the Government Printer of the debates and proceedings of either House or both Houses of Parliament. Act No. 39,  
1958,  
s. 11 (3).

(3) There is a defence of absolute privilege for the publication of— Act No. 39,  
1958,  
s. 40 (3).

- (a) a document previously published as mentioned in subsection (1) or a copy of a document so published; and
- (b) debates and proceedings previously published as mentioned in subsection (2) or a copy of debates and proceedings so published.



**No. 18, 1974** **18.** There is a defence of absolute privilege for a publication in the course of an inquiry made under the authority of an Act or Imperial Act or under the authority of Her Majesty, of the Governor, or of either House or both Houses of Parliament.

Proceedings of inquiry.  
Act No. 39, 1958, s. 12.

**Report of inquiry.** **19.** Where a person is appointed under the authority of an Act or Imperial Act or under the authority of Her Majesty, of the Governor or of either House or both Houses of Parliament to hold an inquiry, there is a defence of absolute privilege for a publication by him in an official report of the result of the inquiry.

Act No. 39, 1958, s. 13.

*DIVISION 4.—Qualified Privilege.*

**Multiple publication.**

**20.** (1) For the purposes of this section—

(a) “multiple publication” means publication of the same or like matter or of copies of any matter to two or more recipients—

(i) at the same time;

(ii) by means of the publication in the ordinary course of affairs of numerous copies of a newspaper or other writing; or

(iii) otherwise in the course of the one transaction;

(b) matter is published under qualified privilege if, but only if, the matter—

(i) is published on an occasion of qualified privilege; and

(ii) is relevant to the occasion; and

(c)

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- (c) an occasion is one of qualified privilege if, but only No. 18, 1974 if—
- (i) it is an occasion of qualified privilege under the law apart from this Act; or
  - (ii) the circumstances of the publication afford a defence of qualified privilege under section 21 or section 22.

## (2) Where—

- (a) a person makes a multiple publication; and
- (b) the matter published would if published to one or more, but not all, of the recipients be published under qualified privilege as regards that recipient or those recipients,

there is a defence of qualified privilege for the publication to that recipient or those recipients, notwithstanding that the publication is not made under qualified privilege as regards any other recipient.

## (3) Where—

- (a) a person makes a multiple publication;
- (b) the matter published would if published to one or more, but not all, of the recipients be published under qualified privilege as regards that recipient or those recipients; and
- (c) the extent of publication is reasonable having regard to the matter published and to the occasion of qualified privilege,

there is a defence of qualified privilege as regards all of the recipients.

**21.** Where—

- (a) a publication complained of is made in the course of a communication by the publisher to any person;

Mistaken  
character  
of re-  
cipient.

(b)

- No. 18, 1974
- (b) the publication is made in circumstances in which there would be a defence of qualified privilege for that publication if that person bore some character; and
  - (c) the publisher believes, at the time of the communication, on reasonable grounds, that that person bears that character,

there is a defence of qualified privilege for that publication.

Information.  
Act No. 39,  
1958, s. 17  
(d), (e).

**22.** (1) Where, in respect of matter published to any person—

- (a) the recipient has an interest or apparent interest in having information on some subject;
- (b) the matter is published to the recipient in the course of giving to him information on that subject; and
- (c) the conduct of the publisher in publishing that matter is reasonable in the circumstances,

there is a defence of qualified privilege for that publication.

(2) For the purposes of subsection (1), a person has an apparent interest in having information on some subject if, but only if, at the time of the publication in question, the publisher believes on reasonable grounds that that person has that interest.

cf. *Macintosh v. Dun* [1908] A.C. 390.

(3) Where matter is published for reward in circumstances in which there would be a qualified privilege under subsection (1) for the publication if it were not for reward, there is a defence of qualified privilege for that publication notwithstanding that it is for reward.

Qualified privilege a question for the court.

**23.** Where proceedings for defamation are tried before a jury and, on the facts, there is a question whether there is a defence of qualified privilege under this Division, that question is to be determined by the court and not by the jury.

DIVISION

*Defamation.*DIVISION 5.—*Protected Reports, etc.*

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24. (1) In this section, "protected report" means a report of proceedings specified in clause 2 of Schedule 2 as proceedings for the purposes of this definition.

Protected reports.  
Schedule 2.

(2) There is a defence for the publication of a fair protected report.

(3) Where a protected report is published by any person, there is a defence for a later publication by another person of the protected report or a copy of the protected report, or of a fair extract or fair abstract from, or fair summary of, the protected report, if the second person does not, at the time of the later publication, have knowledge which should make him aware that the protected report is not fair.

(4) Where material purporting to be a protected report is published by any person, there is a defence for a later publication by another person of the material or a copy of the material or of a fair extract or fair abstract from, or fair summary of, the material, if the second person does not, at the time of the later publication, have knowledge which should make him aware that the material is not a protected report or is not fair.

25. There is a defence for the publication of—

- (a) a document or record specified in clause 3 of Schedule 2 as a document or record to which this section applies or a copy of such a document or record; and
- (b) a fair extract or fair abstract from, or fair summary of, any such document or record.

Copies, etc., of official and public documents and records.

26. Where a defence is established under section 24 or section 25, the defence is defeated if, but only if, it is shown that the publication complained of was not in good faith for public information or the advancement of education.

Defeat of defence under secs. 24, 25.

DIVISION

No. 18, 1974      DIVISION 6.—*Court Notices, Official Notices, etc.*

Court notices, 15 & 16 Geo. 6 and 1 Eliz. 2, c. 66, s. 7 (1), Sch. para. 7.

**27.** (1) There is a defence for the publication of a notice in accordance with the direction of a court of any country.

(2) Where a defence is established under subsection (1), the defence is defeated if, but only if, it is shown that the publication complained of was not in good faith for the purpose of giving effect to the direction.

Official notices, etc. 15 & 16 Geo. 6 and 1 Eliz. 2, c. 66, s. 7, Sch. para. 12; Act No. 39, 1958, s. 14 (1) (g).

**28.** (1) There is a defence for the publication of any notice or report in accordance with an official request.

(2) Where a defence is established under subsection (1), the defence is defeated if, but only if, it is shown that the publication complained of was not in good faith for the purpose of giving effect to the request.

(3) Where there is an official request that any notice or report be published to the public generally or to any section of the public, and the notice or report is or relates to a matter of public interest, there is a defence for a publication of the notice or report, or a fair extract or fair abstract from, or a fair report or summary of, the notice or report.

(4) Where a defence is established under subsection (3), the defence is defeated if, but only if, it is shown that the publication complained of was not in good faith for the information of the public.

(5) This section does not affect the liability (if any) in defamation of a person making an official request.

(6) In this section, "official request" means a request by—

- (a) an officer of the government (including a member of a police force) of any Australian State, or of the Commonwealth, or of any Territory of the Commonwealth; or

(b)

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- (b) a council, board or other authority or person No. 18, 1974 constituted or appointed for public purposes under the legislation of any Australian State, or of the Commonwealth, or of any Territory of the Commonwealth.

DIVISION 7.—*Comment.*

**29.** (1) The defence or exclusion of liability in cases of General. fair comment on a matter of public interest—

- (a) is modified as appears in this Division; and  
 (b) is not available except in accordance with this Division.

(2) This Division has effect notwithstanding section 11.

**30.** (1) For the purposes of this section, but subject to Proper material. subsection (2), “proper material for comment” means material which, if this Division had not been enacted, would, by reason that it consists of statements of fact, or by reason that it is a protected report within the meaning of section 24, or for some other reason, be material on which comment might be based for the purposes of the defence or exclusion of liability in cases of fair comment on a matter of public interest.

(2) A statement of fact which is a matter of substantial truth is proper material for comment for the purposes of this section, whether or not the statement relates to a matter of public interest.

(3) The defences under this Division are available as to any comment if, but only if—

- (a) the comment is based on proper material for comment; or

(b)

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(b) the material on which the comment is based is to some extent proper material for comment and the comment represents an opinion which might reasonably be based on that material to the extent to which it is proper material for comment.

(4) There is no special rule governing the nature of the material which may be the basis of comment imputing a dishonourable motive or governing the degree of foundation or justification which comment imputing a dishonourable motive must have in the material on which the comment is based.

Public  
interest.

31. The defences under this Division are not available as to any comment unless the comment relates to a matter of public interest.

Comment of  
defendant.

32. (1) Subject to sections 30 and 31, it is a defence as to comment that the comment is the comment of the defendant.

(2) A defence under subsection (1) as to any comment is defeated if, but only if, it is shown that, at the time when the comment was made, the comment did not represent the opinion of the defendant.

Comment  
of  
servant or  
agent of  
defendant.

33. (1) Subject to sections 30 and 31, it is a defence as to comment that the comment is the comment of a servant or agent of the defendant.

(2) A defence under subsection (1) as to any comment is defeated if, but only if, it is shown that, at the time when the comment was made, any person whose comment it is, being a servant or agent of the defendant, did not have the opinion represented by the comment.

34.

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**34.** (1) Subject to sections 30 and 31, it is a defence No. 18, 1974  
 as to comment that the comment is not, and in its context Comment  
 and in the circumstances of the publication complained of of  
 did not purport to be, the comment of the defendant or of stranger.  
 any servant or agent of his.

(2) A defence under subsection (1) is defeated if, but only if, it is shown that the publication complained of was not in good faith for public information or the advancement of education.

**35.** Where the matter complained of includes comment and includes material upon which the comment is based, a defence under this Division as to the comment is not a defence as to the material upon which the comment is based. Effect of defence. cf. Orr v. Isles (1965) 83 W.N. (Pt. 1), 303.

DIVISION 8.—*Offer of Amends.*

**36.** For the purposes of this Division, where any matter is published by any person, and the matter is or may be defamatory of another person, the publication is innocent in relation to that other person if, but only if, at and before the time of publication, each of them, the publisher and his servants and agents concerned with the matter in question or its publication— Innocent publication: meaning. 15 & 16 Geo. 6 and 1 Eliz. 2, c. 66, s. 4 (5), (6).

- (a) exercises reasonable care in relation to the matter in question and its publication;
- (b) does not intend the matter in question to be defamatory of that person; and
- (c) does not know of circumstances by reason of which the matter in question is or may be defamatory of that person.

**37.**



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**No. 18, 1974** **37.** (1) Where any matter is published by any person and the matter is or may be defamatory of any other person but the publisher claims that his publication of that matter is innocent in relation to that other person, the publisher may make to that other person an offer of amends in accordance with this Division.

Offer of  
amends.  
15 & 16  
Geo. 6 and 1  
Eliz. 2,  
c. 66, s. 4  
(1).

**15 & 16  
Geo. 6 and 1  
Eliz. 2,  
c. 66, s. 4  
(2), (3).** (2) An offer of amends made pursuant to this Division—

- (a) must be expressed to be so made;
- (b) must include an offer to publish, or join in publishing—
  - (i) such correction, if any, of the matter in question as is reasonable; and
  - (ii) such apology, if any, to the offeree as is reasonable; and
- (c) where material containing the matter in question has been delivered to any person by the publisher or with his knowledge, must include an offer to take, or join in taking, such steps, if any, as are reasonable for the purpose of notifying the recipient that the matter in question is or may be defamatory of the offeree.

(3) In determining whether any, and if so, what correction, apology or steps are reasonable for the purposes of subsection (2), regard shall be had to any correction or apology published, or steps taken, by the publisher or any other person at any time before the occasion for determination arises.

**Particulars  
in support  
of offer.** **38.** (1) An offer made pursuant to this Division must be accompanied by—

15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (2).

- (a) particulars of the facts on which the publisher relies to show that his publication of the matter in question is innocent in relation to the offeree;

(b)

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- (b) particulars of any correction or apology made or steps taken, before the date of the offer, upon which the publisher relies for the purposes of section 37 (3); and
- (c) a statutory declaration verifying the particulars mentioned in paragraphs (a) and (b).
- (2) The statutory declaration mentioned in subsection (1) (c) must be made—
- (a) by the publisher;
- (b) where the publisher is a corporation aggregate, by an officer of the corporation having knowledge of the facts; or
- (c) where, upon facts appearing in the statutory declaration, it is impracticable to comply with paragraph (a) or (b), by a person authorised by the publisher and having knowledge of the facts.

**39.** (1) Where an offer of amends made pursuant to this Division is accepted, the court may, on application by a party to the offer, determine any question as to the steps to be taken in performance of the agreement arising by acceptance of the offer.

Determination of questions.  
15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (4)  
(a).

(2) An appeal does not lie from a determination under this section.

**40.** Where an offer made pursuant to this Division is accepted and the agreement arising by acceptance of the offer is performed, the offeree shall not commence or continue any proceedings against the offeror for damages for defamation in respect of the matter in question.

Effect of acceptance and performance.  
15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (1)  
(a).

**41.**

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**No. 18, 1974** **41.** Where an offer made pursuant to this Division is accepted, the court may make an order for payment by the offeror to the offeree of—

Costs and expenses.

15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (4)  
(b).

- (a) the costs of the offeree of and incidental to the acceptance and of the offer and the performance of the agreement arising by acceptance of the offer, including costs on an indemnity basis; and
- (b) the expenses of the offeree incurred in consequence of the publication of the matter in question.

**42.** The powers given by section 39 or section 41 to a court are exercisable—

Courts with powers under secs. 39, 41.

15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (4).

- (a) if the offeree has brought proceedings against the offeror in any court for damages for defamation in respect of the matter in question, by that court in those proceedings; and
- (b) except as provided in paragraph (a), by the Supreme Court.

**43.** (1) Where an offer is made pursuant to this Division and the offeree does not accept the offer, it is a defence to proceedings by the offeree against the offeror for damages for defamation in respect of the matter in question that—

Offer not accepted.  
15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (1)  
(b).

- (a) the publication by the offeror of the matter in question was innocent in relation to the offeree;
- (b) the offeror made the offer as soon as practicable after becoming aware that the matter in question is or may be defamatory of the offeree;
- (c) the offeror is ready and willing to perform an agreement arising by the acceptance of the offer upon acceptance by the offeree at any time before the commencement of the trial upon issues arising on a defence under this section; and

(d)

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(d) if the offeror is not the author of the matter in question, that the author was not actuated by ill will to the offeree. No. 18, 1974

(2) For the purposes of a defence under this section, evidence of facts other than facts of which particulars are given under section 38 is not admissible on behalf of the offeror, except with the leave of the court, to prove that the publication by the offeror of the matter in question is innocent in relation to the offeree. 15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (2).

44. (1) Where there are two or more publishers, whether joint or otherwise, of any matter, and one or more but not all of them make an offer pursuant to this Division, this Division does not, by virtue of that offer, affect the liability of the other or others of them. Other  
publishers.  
15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66,  
s. 4 (1)  
(a).

(2) Subsection (1) does not affect the admissibility in mitigation of damages of any correction, apology or other thing.

45. An agreement arising by the acceptance of an offer made pursuant to this Division does not have any effect in law except as specified in this Division and except so far as a contrary intention appears by the agreement. Limited  
effect of  
agreement.

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PART IV.

DAMAGES.

46. (1) In this section "relevant harm" means, in relation to damages for defamation— General.

- (a) harm suffered by the person defamed; or
- (b) where the person defamed dies before damages are assessed, harm suffered by the person defamed by way of injury to property or financial loss.

(2)

No. 18, 1974 (2) Damages for defamation shall be the damages recoverable in accordance with the common law, but limited to damages for relevant harm.

(3) In particular, damages for defamation—

- (a) shall not include exemplary damages; and
- (b) shall not be affected by the malice or other state of mind of the publisher at the time of the publication complained of or at any other time, except so far as that malice or other state of mind affects the relevant harm.

Truth or falsity of imputation. 47. On the question of the amount of damages where it is relevant to that question that the imputation complained of was or was not true or a matter of substantial truth—

- (a) there is no presumption as to whether the imputation was or was not true or a matter of substantial truth; and
- (b) evidence as to whether the imputation was or was not true or a matter of substantial truth may be adduced by any party (whether or not evidence on the subject is adduced by any other party).

Other recoveries. 48. In proceedings for damages for defamation in respect of the publication of any matter, evidence is admissible on behalf of the defendant, in mitigation of damages, that the plaintiff—

- (a) has already recovered damages;
- (b) has brought proceedings for damages; or
- (c) has received or agreed to receive compensation,

for defamation in respect of any other publication of matter to the same purport or effect as the matter complained of in the proceedings.

PART V.

No. 18, 1974

CRIMINAL DEFAMATION.

49. (1) The common law misdemeanour of criminal libel is abolished. Common law criminal libel abolished.

(2) This section does not affect the law relating to blasphemous, seditious or obscene libel.

50. (1) A person shall not, without lawful excuse, publish matter defamatory of another living person— Offence.

(a) with intent to cause serious harm to any person (whether the person defamed or not); or

(b) where it is probable that the publication of the defamatory matter will cause serious harm to any person (whether the person defamed or not) with knowledge of that probability.

Penalty: Imprisonment for a term not exceeding three years or a fine of such amount as the court may impose or both.

(2) In subsection (1), “publish” has the meaning which it has in the law of tort relating to defamation.

(3) An offence under this section is an indictable misdemeanour.

51. (1) A person accused of an offence under section 50 in respect of the publication of matter defamatory of another person has lawful excuse for the publication where, but only where, if that other person brought proceedings against the accused for damages for defamation in respect of the publication of that matter, the accused would be entitled to succeed in those proceedings, having regard only to the events happening before and at the time of the publication. Lawful excuse.

(2)

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(2) Where an information or other statement of a charge of an offence under section 50 alleges that the accused published the matter in question without lawful excuse, it is not necessary to negative, in the information or other statement, any thing which would amount to lawful excuse under subsection (1).

(3) At the trial of a person accused of an offence under section 50, it is not necessary for the prosecution to negative any thing which would amount to lawful excuse under subsection (1) unless an issue respecting that thing is raised by evidence at the trial.

Criminal  
informa-  
tions  
excluded.  
9 Geo. 4,  
c. 83, s 6.

**52.** Section 6 of the Imperial Act called The Australian Courts Act, 1828, does not apply to an offence under section 50.

Defama-  
tory  
meaning;  
verdict.  
32 Geo. 3,  
c. 60, s. 1;  
Act No. 39,  
1958, ss. 6,  
29.

**53.** On a trial before a jury of an information for an offence under section 50, where it appears to the judge that the matter complained of is capable of bearing a defamatory meaning—

- (a) the question whether the matter complained of **does** bear a defamatory meaning is a question for the jury; and
- (b) the jury may give a general verdict of guilty or not guilty on the issues as a whole in like manner as in other cases.

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## PART VI.

### SUPPLEMENTAL.

Evidence of  
publica-  
tion,  
etc.  
Act No. 39,  
1958,  
ss. 38, 39.

**54.** (1) This section applies to civil proceedings for defamation and to proceedings for an offence under section 50.

(2)

*Defamation.*

(2) Where a document appears to be printed or otherwise produced by a means adapted for the production of numerous copies, and there is in the document a statement to the effect that the document is printed, produced, published or distributed by or for any person, the statement is evidence that the document is so printed, produced, published or distributed.

(3) Evidence that a number or part of a document appearing to be a periodical is printed, produced, published or distributed by or for any person is evidence that a document appearing to be another number or part of the periodical is so printed, produced, published or distributed.

(4) In subsection (3), "periodical" includes any newspaper, review, magazine, or other printed document of which numbers or parts are published periodically.

**55.** (1) This section applies to civil proceedings for defamation and to proceedings for an offence under section 50.

Evidence of criminal offence.  
1968, c. 64,  
s. 13.

(2) Subject to subsection (4), where there is a question of the truth of an imputation concerning any person, and the commission by that person of a criminal offence is relevant to that question, proof of the conviction by a court of that person for that offence is—

- (a) if the conviction is by a court of an Australian State or of the Commonwealth or of a Territory of the Commonwealth, conclusive evidence that he committed the offence; and
- (b) if the conviction is by a court of any other country, evidence that he committed the offence.

(3) For the purposes of subsection (2)—

- (a) an issue whether an imputation was a matter of substantial truth; or

(b)



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- (b) a question whether an imputation was true or a matter of substantial truth, being a question arising in relation to damages for defamation,

is a question of the truth of the imputation, but no other question is a question of the truth of an imputation.

(4) Subsection (2) does not have effect if it is shown that the conviction has been set aside.

(5) For the purposes of this section, the contents of a document which is evidence of conviction of an offence, and the contents of an information, complaint, indictment, charge sheet or similar document on which a person is convicted of an offence, are admissible in evidence to identify the facts on which the conviction is based.

(6) Subsection (5) does not affect the admissibility of other evidence to identify the facts on which the conviction is based.

(7) In this section "conviction" includes—

- (a) in the case of a court-martial within the meaning of the Courts-Martial Appeals Act 1955 of the Commonwealth a conviction which is or is deemed to be a conviction of a court-martial for the purposes of that Act;
- (b) in the case of the Courts-Martial Appeals Tribunal constituted under that Act, a finding of guilty under section 25, 26 or 27 of that Act;
- (c) in the case of a court-martial constituted under the Imperial Act called the Army Act, 1955, or under the Imperial Act called the Air Force Act, 1955, a finding of guilty which is, or falls to be treated as, a finding of the court duly confirmed; and
- (d) in the case of a court-martial constituted under the Imperial Act called the Naval Discipline Act, 1957, a finding of guilty which is, or falls to be treated as, the finding of the court.

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**56.** (1) Where, in civil proceedings for or in respect of the publication of defamatory matter, a question is put to any person or any person is ordered to discover or produce any document or thing, he is not excused from answering that question, or from discovering or producing that document or thing, by reason that to do so may criminate him or his spouse of an offence under section 50 in respect of the publication of that matter.

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Criminating  
answer, etc.  
cf. 1968,  
c. 60, s. 31  
(1).

(2) The answer made by a person to any question, or the discovery or production by a person of any document or thing pursuant to an order, in civil proceedings for or in respect of the publication of defamatory matter, is not admissible in evidence on a prosecution of him or his spouse for an offence under section 50 in respect of the publication of that matter.

(3) In this section, in relation to an answer, discovery or production by any person, "spouse" means his spouse at the time of the answer, discovery or production, as the case requires.

**57.** Damages in respect of a cause of action arising by reason of the failure of a prosecution under section 50 shall not include exemplary damages but shall otherwise be the damages recoverable in accordance with the common law.

Damages on  
failure of a  
prosecution  
under  
section 50.

*Defamation.*

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Sec. 5.

## SCHEDULE 1.

## AMENDMENTS OF ACTS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
No. 40, 1900..	Crimes Act 1900.	<p>Section 100A— After section 100, insert the following section:—</p> <p>Blackmail 100A. (1) Whosoever with intent to cause gain for himself or any other person, or with intent to procure for himself or any other person any appointment or office, or with intent to cause loss to any person—</p> <p>(1) (b); person—</p> <p>1968, c. 60, (a) makes any unwarranted demand; and</p> <p>s. 21 (1); (b) supports that demand by making—</p> <p>Act No. 39, 1958, s. 27 (1).</p> <p>(i) any unwarranted threat to publish;</p> <p>(ii) any unwarranted proposal to abstain from publishing; or</p> <p>(iii) any unwarranted offer to prevent the publication of, any matter or thing concerning any person (whether living or dead), shall be liable to penal servitude for ten years.</p> <p>1968, c. 60, (2) For the purposes of this section—</p> <p>ss. 21 (1), 34 (2)(a).</p> <p>(a) "publish" means communicate to any person;</p> <p>(b) a demand is unwarranted unless the person making it does so in the belief that he has reasonable grounds for making it;</p> <p>(c) a threat, proposal or offer in support of a demand is unwarranted unless the person making it does so in the belief that it is a proper means of supporting the demand;</p>

SCHEDULE

*Defamation.*SCHEDULE 1—*continued.*

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AMENDMENTS OF ACTS—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
No. 40, 1900— <i>continued.</i>	Crimes Act 1900— <i>contd.</i>	<p>(d) "gain" means gain in money or other property, whether temporary or permanent, and includes a gain by keeping what one has, as well as a gain by getting what one has not; and</p> <p>(e) "loss" means loss in money or other property, whether temporary or permanent, and includes a loss by not getting what one might get, as well as a loss by parting with what one has.</p> <p>Section 400— Omit the proviso.</p> <p>Section 574A— After section 574, insert the following section:— Information, etc., necessary to set out in an indictment or criminal proceeding instituted against the publisher of an obscene or blasphemous libel the obscene or blasphemous passages. Act No. 39, 1958, s. 42 (2). 574A. (1) It shall be sufficient to deposit the book, newspaper or other document containing the alleged libel with the information, indictment or criminal proceeding, together with particulars showing precisely, by reference to pages, columns and lines, in what part of the book, newspaper or other document the alleged libel is to be found. (2) It shall be sufficient to deposit the book, newspaper or other document containing the alleged libel with the information, indictment or criminal proceeding, together with particulars showing precisely, by reference to pages, columns and lines, in what part of the book, newspaper or other document the alleged libel is to be found. (3) The particulars under subsection (2) shall be deemed to form part of the record.</p>

SCHEDULE

*Defamation.*

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SCHEDULE 1—*continued.*AMENDMENTS OF ACTS—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Amendment.
No. 40, 1900— <i>continued.</i>	Crimes Act 1900— <i>contd.</i>	(4) All proceedings may be taken thereon as though the passages complained of had been set out in the information, indictment or proceeding.  Section 579— After subsection (3) insert the following subsection:— (4) This section does not affect the operation of section 55 of the Defamation Act, 1974, or the operation of section 23 of the Evidence Act, 1898, for the purposes of section 55 of the Defamation Act, 1974.
No. 24, 1912..	Inebriates Act, 1912.	Section 26— Omit the section, insert instead the following section:— Penalty for 26. Any person who publishes a report of any proceedings under this Act, except by permission of the Judge, Master or magistrate adjudicating, shall be liable to a penalty not exceeding one hundred dollars.
No. 46, 1918..	Venereal Diseases Act, 1918.	Section 29— Omit the section.
No. 39, 1967..	Law Reform Commission Act, 1967.	Section 11— Omit "1958", insert instead "1974".

SCHEDULE

*Defamation.*

## SCHEDULE 2.

No. 18, 1974

PROCEEDINGS OF PUBLIC CONCERN AND OFFICIAL AND PUBLIC  
DOCUMENTS AND RECORDS.Secs. 24,  
25.*Preliminary.*

## 1. In this Schedule—

“country” includes a federation, and a state, province or other part of a federation, and includes a territory governed under a trusteeship agreement;

“court” means a court of any country;

“parliamentary body” means—

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

*Proceedings of Public Concern.*

## 2. The following proceedings are specified for the purposes of the definition of “protected report” in section 24 (1) :—

- |   |  |
|---|--|
| (1) proceedings in public of a parliamentary body;  | Act No. 39,<br>1958, s. 14<br>(1) (a),<br>(b);<br>15 & 16<br>Geo. 6 and<br>1 Eliz. 2,<br>c. 66,<br>Sch. para. 1. |
| (2) proceedings in public of an international organisation of any countries or of governments of any countries; | 15 & 16<br>Geo. 6 and<br>1 Eliz. 2,<br>c. 66, Sch.<br>para. 2.   |
| (3) proceedings in public of an international conference at which governments of any countries are represented; | 15 & 16<br>Geo. 6 and<br>1 Eliz. 2,<br>c. 66, Sch.<br>para. 2.   |

## SCHEDULE

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SCHEDULE 2—*continued.*

15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66, Sch.  
paras. 3, 13.

- (4) proceedings in public of the International Court of Justice or of any other judicial or arbitral tribunal for the decision of any matter in dispute between nations or of any other international judicial or arbitral tribunal;

Act No. 39,  
1958, s. 14  
(1) (d),  
(e); 15 &  
16 Geo. 6  
and 1 Eliz.  
2, c. 66,  
Sch. para.  
4.

- (5) proceedings in public of a court;

Act No. 39,  
1958, s. 14  
(1) (f); 15  
& 16 Geo.  
6 and 1  
Eliz. 2, c.  
66, Sch.  
paras. 5,  
10 (c).

- (6) proceedings in public of an inquiry held under the legislation of any country or held under the authority of the government of any country;

15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66, Sch.  
para. 8.

- (7) so much of the proceedings of an association or of a committee or governing body of an association (being proceedings pursuant to the specified objects) as comprises a finding or decision relating to a member of the association or to a person subject by contract or otherwise by law to control by the association, being a finding or decision—

(a) made in Australia or in a Territory of the Commonwealth; or

(b) having effect, by law or custom or otherwise, in any part of Australia or of a Territory of the Commonwealth,

SCHEDULE

*Defamation.*SCHEDULE 2—*continued.*

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where the association, whether incorporated or not and wherever formed, is—

- (c) an association—
- (i) having amongst its objects the following objects (in this subclause called the specified objects), namely, the advancement of any art, science or religion or the advancement of learning in any field; and
  - (ii) empowered by its constitution to control or adjudicate upon matters connected with the specified objects;
- (d) an association—
- (i) having amongst its objects the following objects (in this subclause called the specified objects), namely, the promotion of any calling, that is to say, any trade, business, industry or profession or the promotion or protection of the interests of persons engaged in any calling; and
  - (ii) empowered by its constitution to control or adjudicate upon matters connected with the calling, or the conduct of persons engaged in the calling; or
- (e) an association—
- (i) having amongst its objects the following objects (in this subclause called the specified objects), namely, the promotion of any game, sport or pastime to the playing or exercise of which the public is admitted as spectators or otherwise or the promotion or protection of the interests of persons connected with the game, sport or pastime; and
  - (ii) empowered by its constitution to control or adjudicate upon matters connected with the game, sport or pastime;

SCHEDULE



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SCHEDULE 2—*continued.*

Act No. 39,  
1958, s. 14  
(1) (i).

- (8) without limiting the operation of any other subclause, proceedings on an appeal to the Committee of the Australian Jockey Club under section 32 of the Australian Jockey Club Act 1873; or

Act No. 39,  
1958, s. 14  
(1) (j).

- (9) proceedings of a public meeting, being a meeting which is open to the public, whether with or without restriction, held in Australia or in a Territory of the Commonwealth, so far as the proceedings relate to a matter of public interest including the advocacy or candidature of any person for a public office.

*Official and Public Documents and Records.*

## 3. Section 25 applies to the following documents and records:—

Act No. 39,  
1958, s. 14  
(1) (c).

- (1) any report, paper, votes or proceedings published in any country by order or under the authority of a parliamentary body for that country;

Act No. 39,  
1958, s. 14  
(3).

- (2) the debates and proceedings of either House of Parliament published by the Government Printer;

Act No. 39,  
1958, s. 40  
(1) (e).

- (3) a document which is—  
 (a) a judgment, being a judgment, decree or order in civil proceedings, of a court; or  
 (b) a record of a court relating to—  
 (i) such a judgment; or  
 (ii) the enforcement or satisfaction of such a judgment; or

15 & 16  
Geo. 6 and  
1 Eliz. 2,  
c. 66, Sch.  
para. 6.

- (4) a record or document kept by a government or statutory authority or court of any Australian State or of the Commonwealth or of a Territory of the Commonwealth or kept in pursuance of the legislation of any Australian State or of the Commonwealth or of a Territory of the Commonwealth, being a record or document which is open to inspection by the public.