

DEFAMATION ACT.

Act No. 39, 1958.

An Act to state and amend the law relating to defamation; to repeal the Defamation Act, 1912, and certain other enactments; and for purposes connected therewith. [Assented to, 31st December, 1958.]

Elizabeth II,
No. 39, 1958.

BE it enacted by the Queen's Most Excellent Majesty, by 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 : —

1. This Act may be cited as the "Defamation Act, 1958". Short title.
2. The Acts mentioned in the Schedule to this Act are to Repeal. the extent therein expressed hereby repealed.

Defamation Act.

No. 39, 1958. **3.** (1) (a) Any alteration of the law by this Act, whether
by the repeal of an enactment or otherwise, does not affect—

Savings.

- (i) a right, privilege, obligation or liability acquired, accrued or incurred before the commencement of this Act under the law that is so altered;
- (ii) a penalty, forfeiture, or punishment incurred in respect of an offence committed against the law that is so altered;
- (iii) a legal proceeding or remedy in respect of such a right, privilege, obligation, liability, penalty, forfeiture or punishment.

(b) Such a proceeding or remedy may be instituted, continued or enforced and such a penalty, forfeiture or punishment may be imposed and enforced as if the law that is so altered had not been altered.

(c) This subsection does not limit any saving in the Interpretation Act of 1897.

(2) Except where this Act deals with, and makes a different provision for, any protection or privilege existing by law immediately before the commencement of this Act, nothing in this Act is to be construed to affect any such protection or privilege.

(3) The repeal of any enactment by this Act shall not be construed as limiting the power of a court or judge to direct either party to an action to give particulars or further particulars of his claim or defence or of any pleadings or of the damages claimed.

Definitions. **4.** In this Act, unless the context or subject matter otherwise indicates or requires—

“Broadcasting station” means any station—

- (a) provided by the Postmaster-General and from which the Australian Broadcasting Commission broadcasts programmes and other services; or
- (b) in respect of which a person holds a license for a commercial broadcasting station under Part IV of the Broadcasting and Television Act 1942-1956 of the Parliament of the Commonwealth.

“Indictment”

“Indictment” includes information presented or filed as No. 39, 1958. provided by law for the prosecution of an offence. —

“Jury” includes a judge of a district court sitting for the determination of questions of fact in an action in a district court. cf. Act No. 32, 1912, s. 3.

“Licensee” means—

- (a) in relation to a broadcasting or television station referred to in paragraph (a) of the definition of “Broadcasting station” or in paragraph (a) of the definition of “Television station”—the Australian Broadcasting Commission;
- (b) in relation to a broadcasting or television station referred to in paragraph (b) of the definition of “Broadcasting station” or in paragraph (b) of the definition of “Television station”—the person who in respect thereof holds a license for a commercial broadcasting or television station, as the case may be, under Part IV of the Broadcasting and Television Act 1942-1956 of the Parliament of the Commonwealth.

“Periodical” includes any newspaper, review, magazine, or other writing or print, published periodically. cf. Qld. 53 Vic. No. 12, s. 3; Tas. 59 Vic. No. 11, s. 3; Crim. Codes, Qld. s. 365; Tas. s. 196; W.A. s. 345.

“Proprietor”, in relation to a periodical, means as well the sole proprietor of the periodical, as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the periodical as between themselves and persons in like manner representing or responsible for the other shares or interests therein, and no other person. cf. Act No. 32, 1912, s. 3.

“Television station” means any station—

- (a) provided by the Postmaster-General and from which the Australian Broadcasting Commission televises programmes and other services; or
- (b)

No. 39, 1958.

(b) in respect of which a person holds a license for a commercial television station under Part IV of the Broadcasting and Television Act 1942-1956 of the Parliament of the Commonwealth.

Defamation.

Defamatory matter.
cf. Tas. 59
Vic. No. 11,
s. 4;
Crim. Codes,
Qld. s. 366;
Tas. s. 197;
W.A. s. 346.

5. Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other persons are likely to be induced to shun or avoid or ridicule or despise him, is called defamatory, and the matter of the imputation is called defamatory matter.

The imputation may be expressed either directly or by insinuation or irony.

Functions of judge and jury.

6. The question whether any matter is or is not defamatory is a question of fact.

cf. Tas. 59
Vic. No. 11,
s. 5;
Crim. Codes,
Qld. s. 367;
Tas. s. 198;
W.A. s. 347.

The question whether any matter alleged to be defamatory is or is not capable of bearing a defamatory meaning is a question of law.

Definition of defamation.

cf. Tas. 59
Vic. No. 11,
s. 5;
Crim. Codes,
Qld. s. 368;
Tas. s. 199;
W.A. s. 348.

7. A person who, by spoken words or audible sounds, or by words intended to be read either by sight or touch, or by signs, signals, gestures, or visible representations, publishes any defamatory imputation concerning any person is said to defame that person.

Publication.

cf. Tas. 59
Vic. No. 11,
s. 7;
Crim. Codes,
Qld. s. 369;
Tas. s. 200;
W.A. s. 349.

8. (1) Publication is, in the case of words spoken, or audible sounds made, in the hearing of a person other than the person defamed, the communication of the words or sounds to that other person by the speaking of the words or making of the sounds, and, in the case of signs, signals or gestures, the making of the signs, signals or gestures so as to be seen or felt by,

by, or otherwise come to the knowledge of, any person other than the person defamed, and, in the case of other defamatory matter, the delivering, reading, exhibiting, or other communication of it, or the causing of it to be delivered, read, or exhibited to, or to be read or heard by, or to be otherwise communicated to, a person other than the person defamed. No. 39, 1958.

(2) The expressions "publish", "publishes" and "publishing" have interpretations corresponding to that of publication.

9. It is unlawful to publish defamatory matter unless the publication is protected, or justified, or excused by law. Publication of defamatory matter is prima facie unlawful. cf. Tas. 59 Vic. No. 11, s. 8; Crim. Codes, Qld. s. 370; Tas. s. 201; W.A. s. 350.

10. The unlawful publication of defamatory matter is an actionable wrong. Defamation actionable. cf. Tas. 59 Vic. No. 11, s. 9; Qld. 53 Vic. No. 12, s. 9.

Absolute Protection.

11. (1) A member of either House of Parliament does not incur any liability as for defamation by the publication of any defamatory matter in the course of a proceeding in Parliament. Privilege of Parliament. cf. Tas. 59 Vic. No. 11, s. 10; Crim. Codes, Qld. s. 371; Tas. s. 202; W.A. s. 351.

(2) A person who presents, or secures the presentation of, a petition to either House of Parliament does not incur any liability as for defamation by the publication to that House of Parliament of any defamatory matter contained in the petition. Petitions.

(3)

No. 39, 1958.

Parliamentary papers.

(3) A person does not incur any liability as for defamation by publishing, by order or under the authority of either House of Parliament, a paper containing defamatory matter.

The Government Printer is deemed to publish the reports of the debates and proceedings in the Legislative Council by order or under the authority of that Council and to publish the reports of the debates and proceedings in the Legislative Assembly by order or under the authority of that Assembly.

Privileges of judges, witnesses, and others in courts of justice, &c.

cf. Tas. 59
Vic. No. 11,
s. 11;
Crim. Codes,
Qld. s. 372;
Tas. s. 203;
W.A. s. 352.

12. A person does not incur any liability as for defamation by publishing in the course of any proceeding held before or under the authority of any court of justice, or in the course of any inquiry made under the authority of any statute, or under the authority of Her Majesty, or of the Governor, or of either House of Parliament, any defamatory matter.

Reports of official inquiries.
cf. Tas. 59
Vic. No. 11,
s. 12;
Crim. Codes,
Qld. s. 373;
Tas. s. 204;
W.A. s. 353.

13. A person appointed under the authority of a statute, or by or under the authority of Her Majesty, or of the Governor, to hold any inquiry does not incur any liability as for defamation by publishing any defamatory matter in any official report made by him of the result of the inquiry.

Protection.

Publication of matters of public interest.

cf. Tas. 59
Vic. No. 11,
s. 13;
Crim. Codes,
Qld. s. 374;
Tas. s. 205;
W.A. s. 354.

14. (1) It is lawful to publish in good faith for the information of the public—

Proceedings of Parliament.

(a) a fair report of the proceedings of either House of the Parliament of the Commonwealth or of the Parliament of this State or of either House or the House of Parliament of any other State of the Commonwealth;

(b)

- (b) a fair report of the proceedings of any committee of any such House as is referred to in paragraph (a) of this subsection or of any joint committee of both Houses of the Parliament of the Commonwealth or of the Parliament of this or any other State of the Commonwealth; No. 39, 1958. — Proceedings of Parliamentary committees.
- (c) a copy of, or an extract from or a fair abstract of, any report, paper, votes, or proceedings published by order or under the authority of any such House as is referred to in paragraph (a) of this subsection; Parliamentary papers.
- (d) a fair report of the public proceedings of any court of justice, whether the proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless, in the case of proceedings that are not final, the publication has been prohibited by the court, but for the purposes of this paragraph matter of a defamatory nature ruled to be inadmissible by a court is not part of the public proceedings of the court; Proceedings of courts of justice.
- (e) a copy or a fair abstract of any default judgment, or of the entries relative to any default judgment, that are recorded in any books kept in the office of any court of justice; Judgments of courts of justice.
- (f) a fair report of the proceedings of any inquiry held under the authority of any statute, or by or under the authority of Her Majesty, or of the Governor-General-in-Council, or of the Governor, or an extract from or a fair abstract of any such proceedings, or a copy of, or an extract from or a fair abstract of, an official report made by the person by whom the inquiry was held; Proceedings of official inquiries.
- (g) at the request or with the consent of a Government office or department, officer of State or officer of police, a notice or report issued by the office, department, or officer for the information of the public; Public notifications by Government.

(h)

Defamation Act.

No. 39, 1958.

**Proceedings
of local
authorities.**

(h) a fair report of the proceedings of any local authority, board, or body of trustees, or other persons, duly constituted under the provisions of any statute for the discharge of public functions, so far as the matter published relates to matters of public concern, except where neither the public nor any newspaper reporter is admitted;

**Certain
proceedings
of
Australian
Jockey Club.**

(i) a fair and accurate report of the proceedings of the Committee of the Australian Jockey Club upon the hearing of any appeal to such Committee in accordance with the provisions of section thirty-two of the Australian Jockey Club Act 1873, as amended by subsequent Acts;

**Public
meetings.**

(j) a fair report of the proceedings of any public meeting, so far as the matter published relates to matters of public concern.

“Public meeting” in this subsection means a meeting lawfully held for a lawful purpose, and for the furtherance or discussion in good faith of a matter of public concern, or for the advocacy of the candidature of any person for a public office, whether the admission to the meeting was open or restricted.

A publication is said to be made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news.

In the case of the publication in a periodical, or as part of a programme or service provided by means of a broadcasting or television station and intended for reception by the general public, of any report or matter referred to in paragraphs (b), (f), (g), (h), (i) and (j) of this subsection, it is evidence of want of good faith if the defendant has been requested by the plaintiff to publish in the manner in which the original publication was made a reasonable letter or statement by way of a contradiction or explanation of the defamatory matter
and

and has refused or neglected to do so, or has done so in a ~~No. 39, 1958~~ manner inadequate or not reasonable having regard to all the circumstances.

(2) Nothing in the foregoing provisions of this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law.

(3) Nothing in this section shall be construed as protecting the publication in a periodical, or as part of a programme or service provided by means of a broadcasting or television station and intended for reception by the general public, of any report of any such proceedings, or of the result of any such proceedings, as are referred to in paragraph (d) of subsection one of this section, unless the publication is made contemporaneously with the proceedings or with the result of the proceedings, as the case may be.

The foregoing provisions of this subsection do not apply to or in relation to the printing or publishing of any matter in any separate volume or part of any bona-fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law or in any publication of a technical character bona-fide intended for circulation among members of the legal profession.

(4) In any civil action, any matter of defence under this section may be pleaded specially with a plea of not guilty, or any other plea, without the leave of a judge. cf. Act No. 32, 1912, s. 29 (2).

15. It is lawful to publish a fair comment—

Fair comment.
cf. Tas. 59
Vic. No. 11,
s. 14;
Crim. Codes,
Qld. s. 375;
Tas. s. 206;
W.A. s. 355.

- (a) respecting any of the matters with respect to which the publication of a fair report in good faith for the information of the public is by section fourteen of this Act declared to be lawful; public proceedings.

(b)

Defamation Act.

- No. 39, 1958.
Public
conduct of
public men.
- (b) respecting the public conduct of any person who takes part in public affairs, or respecting the character of any such person, so far as his character appears in that conduct ;
- Public
conduct of
public
officers.
- (c) respecting the conduct of any public officer or public servant in the discharge of his public functions, or respecting the character of any such person, so far as his character appears in that conduct ;
- Proceedings
in courts
of justice.
- (d) respecting the merits of any case, civil or criminal, that has been decided by any court of justice, or respecting the conduct of any person as a judge, party, witness, counsel, solicitor, or officer of the court, in any such case, or respecting the character of any such person, so far as his character appears in that conduct ;
- Books.
- (e) respecting any published book or other literary production, or respecting the character of the author, so far as his character appears by the book or production ;
- Public
exhibitions
or per-
formances.
- (f) respecting any composition or work of art, or performance publicly exhibited, or respecting the character of the author or performer or exhibitor, so far as his character appears from the matter exhibited ;
- Public
enter-
tainments.
- (g) respecting any public entertainment or sports, or respecting the character of any person conducting or taking part therein, so far as his character appears from the matter of the entertainment or sports, or the manner of conducting the entertainment or sports ;
- Communica-
tions to
the public.
- (h) respecting any communication made to the public on any subject.

Whether a comment is or is not fair is a question of fact. If it is not fair, and is defamatory, the publication of it is unlawful.

16. It is lawful to publish defamatory matter if the matter is true, and if it is for the public benefit that the publication complained of should be made.

Truth.
cf. Tas. 59
Vic. No. 11,
s. 16;
Crim. Codes,
Qld., s. 376;
Tas. s. 207;
W.A. s. 356.

Qualified Protection.

17. It is a lawful excuse for the publication of defamatory matter if the publication is made in good faith—

Excuse.
cf. Tas. 59
Vic. No. 11,
s. 17;
Crim. Codes,
Qld. s. 377;
Tas. s. 208;
W.A. s. 357.

- (a) by a person having over another any lawful authority in the course of a censure passed by him on the conduct of that other in matters to which the lawful authority relates; Censure by person in authority.
- (b) for the purpose of seeking remedy or redress for some private or public wrong or grievance from a person who has, or whom the person making the publication believes, on reasonable grounds, to have, authority over the person defamed with respect to the subject matter of the wrong or grievance; Seeking redress.
- (c) for the protection of the interests of the person making the publication, or of some other person, or for the public good; Interest.
- (d) in answer to an inquiry made (pursuant to contract or otherwise) of the person making the publication relating to some subject as to which the person by whom or on whose behalf the inquiry is made has, or is believed, on reasonable grounds, by the person making the publication to have, an interest in knowing the truth; Answer to inquiries.
- (e) for the purpose of giving information to the person to whom it is made with respect to some subject as to which that person has, or is believed, on reasonable grounds, by the person making the publication to have, such an interest in knowing the truth as to make his conduct in making the publication reasonable under the circumstances; Information.

(f)

- No. 39, 1958.** (i) on the invitation or challenge of the person defamed ;
- Challenge.
- Defence. (g) in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication or some other person ;
- Public discussion. (h) in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which is for the public benefit and if, so far as the defamatory matter consists of comment, the comment is fair.

For the purposes of this section, a publication is said to be made in good faith if the matter published is relevant to the matters the existence of which may excuse the publication in good faith of defamatory matter; if the manner and extent of the publication do not exceed what is reasonably sufficient for the occasion; and if the person by whom it is made is not actuated by ill-will to the person defamed, or by any other improper motive, and does not believe the defamatory matter to be untrue.

Good Faith.

- Burden of proof of good faith.** **18.** When any question arises whether a publication of defamatory matter was or was not made in good faith, and it appears that the publication was made under circumstances which would afford lawful excuse for the publication if it was made in good faith, the burden of proof of the absence of good faith lies upon the party alleging the absence.
- cf. Tas. 59
Vic. No. 11, s. 18;
Crim. Codes,
Qld. s. 378;
Tas. s. 209;
W.A. s. 358.

Relevancy and Public Benefit Questions of Fact.

- Relevancy and public benefit questions of fact.** **19.** Whether any defamatory matter is or is not relevant to any other matter, and whether the public discussion of any subject is or is not for the public benefit, are questions of fact.
- cf. Tas. 59
Vic. No. 11, s. 19;
Crim. Codes,
Qld. s. 379;
Tas. s. 210;
W.A. s. 359.

Defence

Defence in Case of Defamation by Words, Sounds, Signs, Signals or Gestures. No. 39, 1958.

20. (1) In any case other than that of words intended to be read, it is a defence to an action or prosecution for publishing defamatory matter to prove that the publication was made on an occasion and under circumstances when the person defamed was not likely to be injured thereby.

Defence in case of defamation by words, sounds, signs, signals or gestures.

(2) The defence referred to in subsection one of this section may be set up under a plea of not guilty.

cf. Tas. 59 Vic. No. 11, s. 20; Qld. 53 Vic. No. 12, s. 20; Crim. Codes, Qld. s. 382; Tas. s. 211; W.A. s. 362.

Civil Proceedings.

21. In an action for defamation the defendant may (after notice in writing of his intention to do so duly given to the plaintiff at the time of filing or delivering the plea in the action) give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, as soon afterwards as he had an opportunity of doing so.

Evidence of apology admissible in mitigation of damages.

cf. Act No. 32, 1912, s. 6 (1); Qld. 53 Vic. No. 12, s. 21; Tas. 59 Vic. No. 11, s. 21.

22. (1) In an action for the publication of defamatory matter in a periodical, the defendant may plead that the matter was published without actual ill-will to the person defamed or other improper motive, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the periodical a full apology for the defamation or, if the periodical was ordinarily published at intervals exceeding one week, offered to publish the apology in any periodical to be selected by the plaintiff.

Defamatory matter in periodical—plea of apology and of publication without ill-will and negligence.

cf. Act No. 32, 1912, s. 9; Qld. 53 Vic. No. 12, s. 22; Tas. 59 Vic. No. 11, s. 22.

(2) The defendant upon filing the plea may pay into court a sum of money by way of amends for the injury sustained by the publication of the defamatory matter.

(3) To the plea the plaintiff may reply generally denying the whole thereof.

No. 39, 1958.

Consolidation of actions.

cf. Act No. 32, 1912, s. 11;

Qld. 53 Vic. No. 12, s. 23; Tas. 59 Vic. No. 11, s. 23.

23. The court or a judge, upon an application by or on behalf of two or more defendants in actions in respect of the same, or substantially the same, defamatory matter brought by one and the same person, may make an order for the consolidation of the actions, so that they shall be tried together; and after the order has been made, and before the trial of the actions, the defendant in any new action instituted in respect of the same, or substantially the same, defamatory matter may be joined in a common action upon a joint application being made by that defendant and the defendants in the actions already consolidated.

In an action consolidated under this section, the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury find a verdict against the defendant or defendants in more than one of the actions so consolidated, the jury shall proceed to apportion the amount of damages so found between and against the said last-mentioned defendants; and the judge at the trial, if the plaintiff is entitled to the costs of the action, shall make such order as he may deem just for the apportionment of those costs between and against those defendants.

Compensation in other actions admissible in mitigation of damages.

cf. Act No. 32, 1912, s. 6 (2); Qld. 53 Vic. No. 12, s. 24; Tas. 59 Vic. No. 11, s. 24.

24. At the trial of an action for the publication of defamatory matter the defendant may give in evidence, in mitigation of damages, that the plaintiff has already recovered, or has brought actions for damages, or has received or agreed to receive compensation in respect of other publications of defamatory matter to the same purport or effect as the matter for the publication of which such action has been brought.

Disclosing name of writer of article.

cf. Act No. 32, 1912, s. 12.

25. The proprietor of a periodical may upon the written request of a person who has commenced an action in respect of defamatory matter contained in an article, letter, report, or writing in the periodical supply to that person the name
and

and address of the person who supplied the article, letter, No. 39, 1958. report, or writing to the periodical, and in default of compliance with the request the person who has commenced the action may apply to a Judge of the Supreme Court who may, if he sees fit, after hearing the proprietor, direct that the name and address be so supplied.

Criminal Proceedings.

26. Any person who unlawfully publishes any defamatory matter concerning another is liable, upon conviction on indictment, to imprisonment for any term not exceeding one year or a penalty of such amount as the court may award or both.

Unlawful publication of defamatory matter. cf. Act No. 32, 1912, ss. 14, 15; Crim. Codes, Qld. s. 380; Tas. s. 212; W.A. s. 360.

If the offender knows that the defamatory matter is false, he is liable, upon conviction on indictment, to imprisonment for any term not exceeding two years or a penalty of such amount as the court may award or both.

27. (1) Any person who—

- (a) publishes or threatens to publish any defamatory matter concerning another, or
- (b) directly or indirectly threatens to print or publish, or directly or indirectly proposes to abstain from printing or publishing, or directly or indirectly offers to prevent the printing or publishing of any matter or thing concerning another,

with intent—

- (i) to extort any money or security for money, or any valuable thing from that other person or from any other person, or
- (ii) to induce any person to confer upon or procure for any person any appointment or office of profit or trust,

Publishing or threatening to publish defamatory matter with intent to extort money, &c. cf. Act No. 32, 1912, s. 13; Crim. Codes, Qld. s. 383; Tas. s. 216; W.A. s. 363.

is liable, upon conviction on indictment, to imprisonment for any term not exceeding three years.

(2)

No. 39, 1958. (2) Nothing in this section alters or affects any law in force immediately before the commencement of this Act in respect of the sending or delivery of threatening letters or writings.

Defence of truth of defamatory matter to be specially pleaded.
cf. Crim. Codes, Qld. s. 599; Tas. s. 213.

28. A person charged in criminal proceedings with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the publication should be made, shall plead the matter of the defence specially, and may plead it with any other plea, except the plea of guilty.

General verdict on charge of defamation.
cf. Crim. Codes, Qld. s. 625; W.A. s. 643.

29. On the trial of a person charged with the unlawful publication of defamatory matter, the jury may give a general verdict of guilty or not guilty upon the whole matter in issue, in like manner as in other cases.

Costs in certain cases of defamation.
cf. Crim. Codes, Qld. s. 661; W.A. s. 675; Act No. 32, 1912, s. 22.

30. In the case of a prosecution of any person by a private prosecutor on the information of the private prosecutor on a charge of the unlawful publication of any defamatory matter—

- (a) if the accused person is indicted and acquitted he is entitled to recover from the prosecutor his costs of defence, unless the court otherwise orders;
- (b) if the accused person pleads that the defamatory matter was true and that it was for the public benefit that the publication should be made, then, if that issue is found for the Crown, the prosecutor is entitled to recover from the accused person the costs sustained by the prosecutor by reason of that plea unless the court otherwise orders.

Those costs shall be taxed by the proper officer of the court before which the indictment for the offence was tried.

31. Where a person is charged before a stipendiary magistrate with an indictable offence respecting the unlawful publication of defamatory matter, the stipendiary magistrate may receive evidence as to any matter which may be given in evidence by way of defence by the person charged on his trial on indictment; and the stipendiary magistrate if of opinion after hearing the evidence, that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

No. 39, 1958.
Evidence of defences admissible in committal proceedings.
cf. Act No. 32, 1912, s. 23.

32. Where a person is charged before a stipendiary magistrate with an indictable offence respecting the unlawful publication of defamatory matter, and the stipendiary magistrate is of opinion that, though the evidence for the prosecution is sufficient to put the person charged on his trial, the case is of a trivial nature, and that the offence may be adequately punished under this section, the stipendiary magistrate shall cause the charge to be reduced into writing and read to the person charged, and shall then address a question to him to the following effect, "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?"; and if the person charged consents to the case being dealt with summarily, the stipendiary magistrate may summarily convict him, and adjudge him to pay a fine not exceeding fifty pounds.

Summary conviction for defamation.
cf. *Ibid.* s. 24; Crim. Codes, Qld. s. 389; W.A. s. 369.

33. A criminal prosecution cannot be commenced against any person for the unlawful publication of any defamatory matter without the order of a Judge of the Supreme Court or of a District Court first had and obtained.

Order of Judge required for prosecution.
cf. Act No. 32, 1912, s. 25.

Application for the order shall be made on notice to the person accused, who shall have an opportunity of being heard against the application.

Provisions with Respect to Publishers and Sellers of Periodicals and Sellers of Books, &c.

34. A proprietor, publisher or editor of a periodical is not criminally responsible for the unlawful publication in the periodical of defamatory matter if he shows that the matter complained of was inserted without his knowledge and without negligence on his part.

Liability of proprietor, publisher, and editor of periodicals.
cf. Crim. Codes, Qld. s. 384; Tas. s. 217; W.A. s. 364.

General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise; and to insert therein what in his discretion

discretion

434 **Defamation Act.**

No. 39, 1958. — discretion he thinks fit, is not negligence within the meaning of this section, unless it is proved that the proprietor or publisher or editor when giving that general authority meant that it should extend to and authorise the unlawful publication of defamatory matter, or continued that general authority, knowing that it had been exercised by unlawfully publishing defamatory matter in any number or part of the periodical.

Protection of innocent sellers of periodicals and books, &c.
cf. Tas. 59 Vic. No. 11, ss. 32, 33; Qld. 53 Vic. No. 12, ss. 34, 35; Crim. Codes, Qld. ss. 385, 386; Tas. ss. 218, 219; W.A. ss. 365, 366.

35. A person does not incur any liability as for defamation merely by selling—

- (a) any number or part of a periodical unless he knows that the number or part contains defamatory matter, or that defamatory matter is habitually or frequently contained in that periodical, or
- (b) a book, pamphlet, print or writing, or other thing not forming part of a periodical, although it contains defamatory matter, if at the time of the sale he does not know that the defamatory matter is contained therein.

Protection of employers.
cf. Tas. 59 Vic. No. 11, s. 34; Qld. 53 Vic. No. 12, s. 36; Crim. Codes, Qld. s. 387; Tas. s. 220; W.A. s. 367.

36. An employer is not responsible as for the unlawful publication of defamatory matter merely by reason of the sale by his servant of a book, pamphlet, print, or writing, or other thing, whether a periodical or not, containing the defamatory matter, unless it is proved that the employer authorised the sale, knowing that the book, pamphlet, print, writing, or other thing, contained defamatory matter, or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently contained in the periodical.

Provisions with Respect to Broadcasting and Television Stations.

Liability of licensee, general manager or manager of broadcasting or television station.

37. A licensee, general manager or manager of a broadcasting or television station is not criminally responsible for the unlawful publication of defamatory matter as part of a programme or service provided by means of the broadcasting or television station, as the case may be, and intended for reception

reception by the general public, if he shows that the matter complained of was included without his knowledge and without negligence on his part. No. 39, 1958.

General authority given to the person who actually included the defamatory matter to manage or conduct the broadcasting or television station as general manager, manager or otherwise, and to include in programmes or services what in his discretion he thinks fit, is not negligence within the meaning of this section, unless it is proved that the licensee, general manager or manager when giving that general authority meant that it should extend to and authorise the unlawful publication of defamatory matter, or continued that general authority, knowing that it had been exercised by unlawfully publishing defamatory matter in a programme or service provided by means of the broadcasting or television station, as the case may be, and intended for reception by the general public.

Evidence.

38. Upon the trial of an action for unlawfully publishing defamatory matter that is contained in a book or periodical, the production of the book, or of a number or part of the periodical, containing a printed statement that it is printed or published by or for the defendant, shall be prima facie evidence of the publication of the book, or of the number or part of the periodical, by the defendant.

Prima facie evidence of publication of book or periodical. cf. Qld. 53 Vic. No. 12, s. 38; Tas. 59 Vic. No. 11, s. 36.

39. Upon the trial of an action or prosecution for unlawfully publishing defamatory matter that is contained in a periodical, after evidence sufficient in the opinion of the court has been given of the publication by the defendant of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published, and containing a printed statement that they were published by or for the defendant, are admissible in evidence on either side, without further proof of publication of them.

Evidence on trial for defamation. cf. Qld. 53 Vic. No. 12, s. 39; Tas. 59 Vic. No. 11, s. 37; Crim. Code, Qld. s. 640.

Staying

No. 39, 1958.

Staying Proceedings.

Papers and proceedings published by authority of Parliament.
 cf. Act No. 32, 1912, ss. 26, 27; Qld. 53 Vic. No. 12, ss. 40, 41; Crim. Codes, Qld. s. 699; Tas. ss. 223, 224; W.A. s. 733.

40. (1) If the defendant in any civil or criminal proceeding commenced or prosecuted in respect of the publication by the defendant, or by his servants, of any report, paper, votes, or proceedings of the Legislative Council or of the Legislative Assembly, brings before the court in which the proceeding is pending, or before any judge thereof, first giving twenty-four hours' notice of his intention to do so to the prosecutor or plaintiff in the proceeding, a certificate under the hand of the President or Clerk of the Legislative Council or the Speaker or Clerk of the Legislative Assembly, as the case may be, stating that the report, paper, votes, or proceedings, as the case may be, was or were published by the defendant, or by his servants, by order or under the authority of the Council or Assembly, as the case may be, or of a committee thereof, together with an affidavit verifying the certificate, the court or judge shall immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section.

(2) The Government Printer is deemed to publish the reports of the debates and proceedings in the Legislative Council by order or under the authority of that Council and to publish the reports of the debates and proceedings in the Legislative Assembly by order or under the authority of that Assembly.

(3) If the defendant in any civil or criminal proceeding commenced or prosecuted in respect of the publication of any copy of such report, paper, votes, or proceedings as is or are referred to in subsection one of this section brings before the court in which the proceeding is pending, or before any judge thereof, at any stage of the proceeding the report, paper, votes, or proceedings, and the copy, with an affidavit verifying the report, paper, votes, or proceedings, and the correctness of the copy, the court or judge shall immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section.

Laws Relating to Newspapers and Printing to be Observed. No. 39, 1958.

41. (1) Notwithstanding the foregoing provisions of this Act a defendant in any proceeding, civil or criminal, shall not be able to avail himself of any of the benefits or advantages enacted by any of the provisions of sections twenty, twenty-one, twenty-two, twenty-four and thirty-four of this Act unless at the time of the publication of the article complained of, if it is a printed article, all the provisions made by law for regulating the printing and publication of newspapers and papers of a like nature, or of the trade of printing generally, applicable to such a work as that in which the article is printed, have been complied with.

Benefits of certain sections not to extend to defendants if laws regulating printing, &c., have not been complied with.
cf. Act No. 32, 1912, s. 34.

(2) Any specified non-compliance with any provision so made by law is a good answer to any pleading under this Act.

(3) The defendant is nevertheless bound by the other parts of this Act.

Slander of Title and Blasphemous, Seditious and Obscene Libels.

42. (1) Except as provided in subsection two of this section, nothing in this Act applies to the actionable wrong commonly called "slander of title" or to the misdemeanour of publishing a blasphemous, seditious or obscene libel.

Act not to apply to slander of title or blasphemous, seditious or obscene libels.
cf. Qld. 53 Vic. No. 12, s. 46; Tas. 59 Vic. No. 11, s. 42.

(2) It is not necessary to set out in an information, indictment, or criminal proceeding instituted against the publisher of an obscene or blasphemous libel the obscene or blasphemous passages; it is 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,

cf. Act No. 32, 1912, s. 16.

438 **Friendly Societies (Amendment) Act.**

No. 39, 1958. pages, columns, and lines in what part of the book, newspaper, or other document, the alleged libel is to be found; and those particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the information, indictment or proceeding.

Sec. 2.

SCHEDULE.

Reference to Act	Title or short title	Extent of Repeal
No. 32, 1912 ..	Defamation Act, 1912 ..	The whole
No. 14, 1917 ..	Defamation (Amendment) Act, 1917	The whole
No. 4, 1940 ..	Defamation (Amendment) Act, 1940	The whole
No. 39, 1948 ...	Racing (Amendment) Act, 1948	Section 4

