

DEFAMATION (AMENDMENT) ACT 1994 No. 93

NEW SOUTH WALES



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DEFAMATION (AMENDMENT) ACT 1994 No. 93

NEW SOUTH WALES



Act No. 93, 1994

An Act to amend the Defamation Act 1974 in relation to the functions of trial judges and juries and the assessment of damages in defamation proceedings; and for other purposes. [Assented to 12 December 1994]

Defamation (Amendment) Act 1994 No. 93

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Defamation (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Defamation Act 1974 No. 18

3. The Defamation Act 1974 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 3 (**Division of Act**):

Omit the section.

- (2) Section 7A:

Before section 8, insert:

Functions of judge and jury

7A. (1) If proceedings for defamation are tried before a jury, the court and not the jury is to determine whether the matter complained of is reasonably capable of carrying the imputation pleaded by the plaintiff and, if it is, whether the imputation is reasonably capable of bearing a defamatory meaning.

- (2) If the court determines that:

- (a) the matter is not reasonably capable of carrying the imputation pleaded by the plaintiff or
- (b) the imputation is not reasonably capable of bearing a defamatory meaning,

the court is to enter a verdict for the defendant in relation to the imputation pleaded.

SCHEDULE 1—AMENDMENTS—*continued*

(3) If the court determines that:

- (a) the matter is reasonably capable of carrying the imputation pleaded by the plaintiff and
- (b) the imputation is reasonably capable of bearing a defamatory meaning,

the jury is to determine whether the matter complained of carries the imputation and, if it does, whether the imputation is defamatory.

(4) If the jury determines that the matter complained of was published by the defendant and carries an imputation that is defamatory of the plaintiff, the court and not the jury is:

- (a) to determine whether any defence raised by the defendant (including all issues of fact and law relating to that defence) has been established; and
- (b) to determine the amount of damages (if any) that should be awarded to the plaintiff and all unresolved issues of fact and law relating to the determination of that amount.

(5) To the extent that section 88 of the Supreme Court Act 1970 applies to proceedings for defamation, it applies subject to the provisions of this section.

(3) Section 9 (**Causes of action**):

- (a) From the end of section 9 (5) (a), omit “and”.
- (b) Omit section 9 (5) (b).
- (c) After section 9 (5), insert:

(5A) Notwithstanding subsection (2), if the court or the jury (if any) finds for the plaintiff as to more than one cause of action in the same proceedings for defamation, the court may assess damages in a single sum.

(4) Section 12 (**Public interest a question for the court**):

Omit the section.

(5) Section 23 (**Qualified privilege a question for the court**):

Omit the section.

SCHEDULE 1—AMENDMENTS—*continued*(6) Section 46 (**General**):

From section 46 (1), omit “section”, insert instead “Part”.

(7) Section 46A:

After section 46, insert:

Factors relevant in damages assessment

46A. (1) In determining the amount of damages to be awarded in any proceedings ~~for~~ defamation, the court is to ensure that there is an appropriate and rational relationship between the relevant harm and the amount of damages awarded.

(2) In determining the amount of damages **for** non-economic loss to be awarded in any proceedings for defamation, the court is **to** take into consideration the general range **of** damages **for** non-economic loss in personal injury awards in the State (including awards made under, or in accordance with, any statute regulating the award of any such damages).

(8) Section 58:

After section 57, insert:

Savings and transitional provisions

58. Schedule 3 has effect.

(9) Schedule 3:

At the end of the Act, insert:

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 58)

PART 1—GENERAL**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Defamation (Amendment) Act 1994

SCHEDULE 1—AMENDMENTS—*continued*

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF DEFAMATION (AMENDMENT)
ACT 1994**

Definition

2. In this Part:

“**amending Act**” means the Defamation (Amendment) Act 1994.

Application of amendments

3. (1) An amendment made by the amending Act applies only to causes of action that accrue after the commencement of the amendment.

(2) However, an amendment made by the amending Act does not apply to a cause of action that accrues after the commencement of the amendment if

- (a) the cause of action is one of two or more causes of action in proceedings commenced by the plaintiff; and

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) each cause of action in the proceedings accrues because of the publication of the same, or substantially the same, matter on separate occasions (whether by the same defendant or by another defendant); and
 - (c) one or more of the other causes of action in the proceedings accrued before the commencement of the amendment.
- (3) If an amendment made by the amending Act does not apply to a cause of action, this Act is taken to apply to the cause of action as if the amendment had not been made.
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*[Minister's second reading speech made in-
Legislative Council on 22 November 1994
Legislative Assembly on 29 November 1994]*