

# Defamation Act 1974 No 18

[1974-18]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Coal Mine Health and Safety Act 2002 No 129](#) (amended by [Mine Health and Safety Act 2004 No 74](#)) (not commenced)
  - [Mine Health and Safety Act 2004 No 74](#) (not commenced)
  - [Crimes \(Administration of Sentences\) Amendment \(Parole\) Act 2004 No 94](#) (not commenced)
- **See also**
  - [Family Impact Commission Bill 2003](#) [Non-government Bill: Revd the Hon F J Nile, MLC]
  - [Defamation Bill 2005](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Defamation Act 1974 No 18



New South Wales

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# Defamation Act 1974 No 18



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Defamation Act 1974](#).

### 2 Commencement

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 Objects of Act

The objects of this Act are as follows:

- (a) to provide effective and appropriate remedies for persons whose reputations are harmed by the publication of defamatory matter,
- (b) to ensure that the law of defamation does not place unreasonable limits on the publication and discussion of matters of public interest and importance,
- (c) to promote speedy and non-litigious methods of resolving disputes concerning the publication of defamatory matter,
- (d) to promote the resolution of proceedings for defamation before the courts in a timely manner and avoid protracted litigation.

### 4 Repeal of [Defamation Act 1958](#)

- (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.

## 5 (Repealed)

## 6 Act binds Crown

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.

## 7 Definitions

- (1) In this Act:

***offer to make amends*** means an offer to make amends made under section 9D.

***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) Where any right or liability of any person in respect of defamation passes to the executor of the person's will or to the administrator of the person's 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.
- (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.
- (5) Notes included in this Act do not form part of this Act.

## Part 2 General

### 7A Functions of judge and jury

- (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.
- (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) Section 86 of the *Supreme Court Act 1970* and section 76B of the *District Court Act 1973* apply subject to the provisions of this section.

## **8 Slander actionable without special damage**

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

### **8A Corporations do not have cause of action for defamation**

- (1) A corporation has no cause of action for defamation in respect of the publication of any matter by means of which a defamatory imputation about the corporation is made.
- (2) Nothing in subsection (1) precludes an individual who is a member of a corporation from asserting or enforcing a cause of action in defamation in respect of the publication of any matter by means of which a defamatory imputation about the individual is made where that same publication also makes a defamatory imputation about the corporation.
- (3) Despite subsection (1), a corporation may assert or enforce a cause of action in

defamation in respect of the publication of any matter by means of which a defamatory imputation about the corporation is made if:

- (a) the corporation employs fewer than 10 persons at the time of publication of the matter, and
- (b) the corporation has no subsidiaries (within the meaning of the *Corporations Act 2001* of the Commonwealth) at that time.

(4) In this section, **corporation** includes any corporation constituted by or under an Act or any other law (whether or not for a governmental or other public purpose).

## 9 Causes of action

(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:

- (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) 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.

(b) (Repealed)

(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.

(6) This section does not affect:

(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.

## **Part 2A Resolution of disputes without litigation**

### **9A Object of Part**

The object of this Part is to encourage the early settlement of disputes involving the publication of defamatory matter.

### **9B Application of Part**

This Part applies if a person (the ***publisher***) publishes matter (the ***matter in question***) that carries, or may carry, an imputation that is defamatory of another person (the ***aggrieved person***).

### **9C Definitions**

In this Part:

***aggrieved person, matter in question*** and ***publisher***—see section 9B.

***amends agreement***—see section 9F (1) (a).

***qualified offer***—see section 9D (2) (b).

### **9D Offers to make amends**

(1) The publisher may make an offer to make amends to the aggrieved person.

(2) The offer may be in relation to:

(a) the matter in question generally, or

(b) a particular defamatory imputation that the publisher accepts that the matter in question carries (a ***qualified offer***).

(3) An offer to make amends:

- (a) must be in writing, and
  - (b) must be readily identifiable as an offer to make amends under this section, and
  - (c) must include an offer to publish, or join in publishing, a reasonable correction (if appropriate in the circumstances) of the matter in question, and
  - (d) must include an offer to publish, or join in publishing, a reasonable apology (if appropriate in the circumstances) in relation to the matter in question, and
  - (e) if material containing the matter has been given to someone else by the publisher or with the publisher's knowledge—must include an offer to take, or join in taking, reasonable steps to tell the other person that the matter is or may be defamatory of the aggrieved person, and
  - (f) must state whether it is a qualified offer and, if so, set out the defamatory imputation in relation to which it is made, and
  - (g) must include an offer to pay the expenses reasonably incurred by the aggrieved person before the offer was made and the expenses reasonably incurred by the aggrieved person in considering the offer,
  - (h) may include particulars of any correction or apology made, or action taken, before the date of the offer, and
  - (i) may include an offer to pay compensation for any economic or non-economic loss of the aggrieved person.
- (4) For the purposes of subsection (3) (i), an offer to pay compensation may be in any of the following forms:
- (a) an offer to pay a stated amount,
  - (b) an offer to pay an amount to be agreed between the publisher and the aggrieved person or, if an agreement is not made, the amount decided by a court,
  - (c) an offer to pay the amount decided by a court,
  - (d) an offer to:
    - (i) enter into an arbitration agreement within the meaning of the *Commercial Arbitration Act 1984*, and
    - (ii) pay the amount decided by the arbitrator or, if an arbitration agreement is not made, the amount decided by a court.
- (5) The publisher may not make an offer to make amends after the earlier of:
- (a) the end of 28 days after the day the aggrieved person gives the publisher notice

in writing informing the publisher that the matter in question is or may be defamatory of the person, or

(b) the service by the publisher of a defence in an action brought against the publisher by the aggrieved person in relation to the matter in question.

(6) If 2 or more persons published the matter in question, an offer to make amends by one or more of them does not affect the liability of the other or others.

(7) An offer to make amends may be withdrawn before it is accepted.

(8) A publisher who has withdrawn an offer to make amends may make a renewed offer.

(9) A renewed offer may (but need not) be in the same terms as the withdrawn offer.

(10) A renewed offer is to be treated as a new offer (including for the purposes of subsection (5)).

(11) However, nothing in subsection (5) or (10) prevents the making of a renewed offer that is not in the same terms as the withdrawn offer if:

(a) the renewed offer represents a genuine attempt by the publisher to address matters of concern raised by the aggrieved person about the withdrawn offer, and

(b) the renewed offer is made within 14 days after the withdrawal of the withdrawn offer or such other period as may be agreed by the publisher and the aggrieved person.

(12) An offer to make amends is taken to have been made without prejudice, unless the offer otherwise provides.

#### **9E What is a reasonable offer to make amends?**

(1) In deciding whether an offer to make amends is reasonable, a court must have regard to any correction or apology published before any trial arising out of the matter in question, including the extent to which the correction or apology is brought to the attention of the audience of the matter in question having regard to:

(a) the prominence given to the correction or apology as published in comparison to the prominence given to the matter in question as published, and

(b) the period that elapses between publication of the matter in question and publication of the correction or apology.

(2) However, subsection (1) does not limit the matters that the court may take into account in deciding whether an offer to make amends is reasonable.

### **9F Acceptance of offer to make amends**

- (1) If an offer to make amends is accepted, a court may:
  - (a) order the publisher to pay the aggrieved person the expenses incurred by the aggrieved person in accepting and performing the agreement made by acceptance of the offer (the **amends agreement**), and
  - (b) on the application of a party to the amends agreement, decide the amount of compensation mentioned in section 9D (4) (b), (c) or (d).
- (2) If a question arises about what must be done to perform the amends agreement, the court may decide the question on the application of either party.
- (3) A court may (but need not) order any costs incurred by the aggrieved person that form part of the expenses referred to in subsection (1) (a) to be assessed on an indemnity basis.
- (4) The powers conferred on a court by subsection (1), (2) or (3) are exercisable:
  - (a) if the aggrieved person has brought proceedings against the publisher in any court 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.
- (5) If the publisher performs the amends agreement (including paying any compensation under the agreement), the aggrieved person cannot begin or continue an action for defamation against the publisher in relation to the matter in question.

### **9G Effect of failure to accept reasonable offer to make amends**

If an offer to make amends is made in relation to the matter in question but is not accepted, it is a defence to an action for defamation against the publisher in relation to the matter if:

- (a) the publisher made the offer as soon as practicable after becoming aware that the matter is or may be defamatory, and
- (b) at any time before the trial the publisher was ready and willing, on acceptance of the offer by the aggrieved person, to perform the terms of the offer, and
- (c) in all the circumstances the offer was reasonable.

## **Part 3 Defence in civil proceedings**

### **Division 1 General**

#### **10 Application**

This Part deals with defences in civil proceedings for defamation, but not with defences in other proceedings.

#### **11 Common law defence etc**

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.

#### **12 (Repealed)**

#### **13 Unlikelihood of harm**

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.

### **Division 2 Truth**

#### **14 Interpretation**

- (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.

#### **15 Truth generally**

- (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.

### **16 Truth: contextual imputations**

- (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) It is a defence to any imputation complained of 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 Parliamentary papers**

- (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.
- (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.
- (3) There is a defence of absolute privilege for the publication of:
  - (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.

### **17A Matters relating to Ombudsman etc**

- (1) There is a defence of absolute privilege for a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer.
- (2) Subsection (1) applies in relation to an acting Ombudsman, a Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the



Ombudsman.

- (3) There is a defence of absolute privilege for a publication to a member of Parliament for the purposes of section 12 (2) of the *Ombudsman Act 1974* or section 127 (7) of the *Police Act 1990*.
- (4) There is a defence of absolute privilege for the publication under section 31AA of the *Ombudsman Act 1974* or under section 169 of the *Police Act 1990* of a report.
- (5) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the *Ombudsman Act 1974*, of a copy of a report previously made public under section 31AA of that Act.
- (6) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the *Police Act 1990* of a copy of a report previously made public under section 169 of that Act.

**17B Matters relating to the Privacy Commissioner**

- (1) There is a defence of absolute privilege for a publication to or by the Privacy Commissioner, as Privacy Commissioner, or to any member of the staff of the Privacy Commissioner, as such a member.
- (2) Subsection (1) applies in relation to an acting Privacy Commissioner in the same way as it applies in relation to the Privacy Commissioner.
- (3) There is a defence of absolute privilege for the publication of a report under section 65 of the *Privacy and Personal Information Protection Act 1998*.
- (4) There is a defence of absolute privilege for the publication, under the authority of the Minister administering the *Privacy and Personal Information Protection Act 1998*, of a copy of a report previously made public under section 65 of that Act.

**17BA Matters relating to the Law Reform Commission**

- (1) A report published pursuant to section 13 (6) of the *Law Reform Commission Act 1967* shall, for the purposes of this Act, be deemed to have been published under the authority of either House of Parliament.
- (2) There is a defence of absolute privilege:
  - (a) for a publication in the course of the proceedings of, or in the course of an inquiry held by, the Law Reform Commission under the *Law Reform Commission Act 1967*, and
  - (b) for any other publication by the Law Reform Commission in connection with a reference to it under that Act.
- (3) Subsection (2) does not apply to a report referred to in section 13 of the *Law Reform*

*Commission Act 1967.*

**17BB Conciliation officers and conciliators under Workers Compensation Acts**

There is a defence of absolute privilege:

- (a) for a publication to or by a conciliation officer or conciliator for the purpose of any proceedings under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*, and
- (b) for the publication by any such conciliation officer or conciliator of a report of a decision or determination in respect of any such proceedings and of the reasons for that decision or determination, and
- (c) for the publication by any such conciliation officer or conciliator of a conciliation certificate under section 98D of the *Workers Compensation Act 1987* or section 84 of the *Workplace Injury Management and Workers Compensation Act 1998*.

**17BC Matters arising under Motor Accidents Acts**

There is a defence of absolute privilege:

- (a) for a publication to or by:
  - (i) a licensed insurer (within the meaning of the *Motor Accidents Act 1988* or the *Motor Accidents Compensation Act 1999*), or
  - (ii) the Nominal Defendant,for the purpose of any claim or any proceedings arising from any claim under the *Motor Accidents Act 1988* or the *Motor Accidents Compensation Act 1999*, and
- (b) for a publication by any such licensed insurer or the Nominal Defendant of a report of a decision or determination in respect of any such claim and of the reason for that decision or determination, and
- (c) for a publication by the Motor Accidents Authority of New South Wales of the whole or any part of the register maintained by the Authority under section 67 of the *Motor Accidents Act 1988* or section 120 of the *Motor Accidents Compensation Act 1999*.

**17BD Matters arising under Workers Compensation Acts**

(1) There is a defence of absolute privilege:

- (a) for a publication to or by an insurer for the purpose of any claim or any proceedings arising from any claim under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*, and
- (b) for a publication by an insurer of a report of a decision or determination in respect of any such claim and of the reason for that decision or determination, and

(c) for a publication of information under section 93D of the *Workers Compensation Act 1987* or section 72 of the *Workplace Injury Management and Workers Compensation Act 1998* by the Authority referred to in that section, and

(d) for a publication to or by an insurer pursuant to an exchange of information authorised by section 93D (2) of the *Workers Compensation Act 1987* or section 72 of the *Workplace Injury Management and Workers Compensation Act 1998*.

(2) In subsection (1), a reference to insurer or claim has the same meaning as it has in the provision of the *Workers Compensation Act 1987* or of the *Workplace Injury Management and Workers Compensation Act 1998* to which the reference relates.

### **17C Certain decisions of public health organisations under the *Health Services Act 1997***

There is a defence of absolute privilege for the publication under section 105 of the *Health Services Act 1997* of a decision, and the reasons for that decision, of a public health organisation referred to in that section.

### **17CA Matters arising out of proceedings of Parole Board, Serious Offenders Review Council and Serious Offenders Management Committee**

There is a defence of absolute privilege:

(a) for a publication of a report or other document under the *Crimes (Administration of Sentences) Act 1999* by the Parole Board or the Serious Offenders Review Council, and

(b) for a publication in the course of any proceedings of the following bodies:

- the Parole Board or a Division or a committee of that Board
- the Serious Offenders Review Council or a Division or a committee of that Council
- the Serious Offenders Management Committee or a subcommittee of that Committee, and

(c) for a publication by a body referred to in paragraph (b) of a report of any proceedings referred to in that paragraph.

### **17CB Matters relating to the operation of the Inspector-General of Corrective Services**

There is a defence of absolute privilege for a publication:

(a) to or by the Inspector-General of Corrective Services, or

(b) to or by an officer of the Inspector-General as such an officer.

### **17D Matters arising under *Anti-Discrimination Act 1977***

(1) There is a defence of absolute privilege for a publication to or by a member of the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal*

*Act 1997* to or by a member of the Anti-Discrimination Board constituted under the *Anti-Discrimination Act 1977*, to or by the President, or any officer of the President, of that Board, to the Registrar of that Tribunal, to any officer of the Public Service appointed or employed to assist in the execution or administration of the *Anti-Discrimination Act 1977* or to or by the Director of Equal Opportunity in Public Employment appointed under the *Anti-Discrimination Act 1977*, if the publication is made for the purpose of the execution or administration of the *Anti-Discrimination Act 1977*.

(2) There is a defence of absolute privilege for the publication of a report:

- (a) referred to in section 94A (2) of the *Anti-Discrimination Act 1977* of the President of the Anti-Discrimination Board constituted under that Act made to the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*, or
- (b) referred to in section 120 (2), 121, 122 or 122R (b) of that Act to the Minister administering that Act.

**17DA Appeals under the *Racing Appeals Tribunal Act 1983***

There is a defence of absolute privilege:

- (a) for a publication in the course of an appeal under the *Racing Appeals Tribunal Act 1983*, and
- (b) for a publication by the Racing Appeals Tribunal in an official report of its decision in respect of any such appeal and of the reasons for that decision.

**17DB Matters arising under the *Thoroughbred Racing Act 1996***

There is a defence of absolute privilege:

- (a) for a publication in the course of proceedings in respect of an inquiry conducted by Racing New South Wales, and
- (b) for the publication by Racing New South Wales of a report it makes in respect of such an inquiry.

**17DC (Repealed)**

**17E Matters arising under the *Greyhound and Harness Racing Administration Act 2004***

There is a defence of absolute privilege:

- (a) for a publication in the course of an appeal under the *Greyhound and Harness Racing Administration Act 2004*, and
- (b) for a publication by the Greyhound and Harness Racing Appeals Tribunal or the

Greyhound and Harness Racing Regulatory Authority in an official report of its decision in respect of any such appeal and of the reasons for that decision, and

- (c) for a publication in the course of proceedings in respect of an inquiry conducted by that Authority in the exercise of its regulatory functions (including the exercise of any such function by a steward of that Authority), and
- (d) for the publication by that Authority of a report it makes in respect of such an inquiry.

**17EA Matters relating to farm produce sellers**

There is a defence of absolute privilege for the publication of a notice under section 47 or 48 of the *Farm Produce Act 1983*.

**17F Matters arising under [Legal Services Commission Act 1979](#)**

There is a defence of absolute privilege for a publication to or by the Legal Services Commission of New South Wales constituted under the [Legal Services Commission Act 1979](#), an officer of that Commission or a committee established under that Act if the publication is made for the purpose of the execution or administration of that Act.

**17FA Matters arising under [Medical Practice Act 1992](#)**

(1) There is a defence of absolute privilege:

(a) for a publication to or by:

- (i) the New South Wales Medical Board, or
- (ii) an Impaired Registrants Panel, or
- (iii) a Performance Review Panel, or
- (iv) a Professional Standards Committee, or
- (v) the Medical Tribunal, or
- (vi) a member of any of the bodies referred to in subparagraphs (i)-(v), or
- (vii) an assessor,

for the purpose of the assessment or referral of a complaint or other matter or the holding of any inquiry, performance review, investigation or appeal under the [Medical Practice Act 1992](#), and

- (b) for a publication by a body or person referred to in paragraph (a) of a report of a decision or determination in respect of a complaint or other matter or any inquiry, performance review, investigation or appeal, and of the reasons for that decision or determination.

(2) In this section:

- (a) a reference to the New South Wales Medical Board includes a reference to a committee of the Board, and
- (b) a reference to a member of the Board includes a reference to a member of any such committee.

**17G Reports under the [Coal Mines Regulation Act 1982](#)**

There is a defence of absolute privilege:

- (a) for the publication of a report by an inspector, a mine safety officer, an investigator or a Board of Inquiry, under the [Coal Mines Regulation Act 1982](#), to or by the Minister administering that Act or the Director-General of the Department of Mineral Resources, or
- (b) for a publication by a Board of Inquiry in the course of a special inquiry under the [Coal Mines Regulation Act 1982](#).

**17I Matters arising under [Commissioner of Public Complaints Act 1984](#)**

- (1) There is a defence of absolute privilege for a publication to or by the Commissioner of Public Complaints as that Commissioner, or to any officer of that Commissioner as such an officer.
- (2) Subsection (1) applies in relation to an acting Commissioner of Public Complaints in the same way as it applies in relation to the Commissioner.

**17J Matters arising under the [Legal Profession Act 1987](#)**

- (1) There is a defence of absolute privilege:
  - (a) for a publication to or by any of the following:
    - (i) the Bar Council,
    - (ii) a member of the Bar Council as such a member,
    - (iii) a committee or subcommittee of the Bar Council, or any member of a committee or subcommittee of the Bar Council,
    - (iv) the Law Society Council,
    - (v) a member of the Law Society Council as such a member,
    - (vi) a committee or subcommittee of the Law Society Council, or any member of a committee or subcommittee of the Law Society Council,
    - (vii) the Bar Association,

(viii) the Law Society,

(ix) the Legal Services Commissioner,

(x) (Repealed)

(xi) any member of the staff of any of the above as such a member,

for the purpose of the making or referral of a complaint, or the investigation, hearing or review of a complaint, under Part 10 of the *Legal Profession Act 1987*, and

(b) for the publication by a body or person referred to in paragraph (a) of a report of the decision or determination of the body or person in respect of a complaint, and of the reasons for that decision or determination, under Part 10 of the *Legal Profession Act 1987*, and

(c) for the publication by a person or body referred to in paragraph (a) to such a person or body of information in accordance with the exercise of functions under Part 3 or Part 5A of the *Legal Profession Act 1987*, and

(d) for the publication by a person or body referred to in paragraph (a) of a report of the decision or determination of the Bar Council or the Law Society Council in respect of the refusal to issue, cancellation or suspension of a practising certificate.

(2) This section extends to all publications made on or after 1 January 1988 (the date of commencement of this section) regardless of whether the body or person who made the publication, or to whom the publication was made, was at the relevant time a body or person referred to in subsection (1) (a).

#### **17JA Matters arising under the *Surveying Act 2002***

There is a defence of absolute privilege:

(a) for a publication to or by any of the following:

(i) the Board of Surveying and Spatial Information,

(ii) a member of that Board as such a member,

(iii) a committee or subcommittee of that Board, or any member of a committee or subcommittee of that Board,

for the purpose of the making or referral of a complaint of professional incompetence or professional misconduct, or the investigation of such a complaint, made in relation to a registered surveyor under the *Surveying Act 2002*, and

(b) for the publication by a body or person referred to in paragraph (a) of a report of the

decision or determination of the body or person in respect of a complaint, and of the reasons for that decision or determination, made in relation to a registered surveyor under the *Surveying Act 2002*.

**17K Matters arising under the *Independent Commission Against Corruption Act 1988***

- (1) There is a defence of absolute privilege for a publication:
  - (a) to or by the Independent Commission Against Corruption, or
  - (b) to or by the Commissioner for the Commission as Commissioner, or
  - (c) to or by the Inspector of the Independent Commission Against Corruption as Inspector, or
  - (d) to any officer of the Commission or officer of the Inspector (within the meaning of the *Independent Commission Against Corruption Act 1988*) as such an officer.
- (2) This section applies in relation to any compulsory examination or public inquiry before the Independent Commission Against Corruption or inquiry before the Inspector of the Independent Commission Against Corruption or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector.
- (3) This section extends to publications made before the commencement of this section.

**17KA (Repealed)**

**17L Matters arising under the *New South Wales Crime Commission Act 1985***

- (1) There is a defence of absolute privilege for a publication to or by the New South Wales Crime Commission or to any member of the Commission or member of the staff of the Commission in his or her capacity as such a member.
- (2) This section applies in relation to any hearing before the New South Wales Crime Commission or any other matter relating to the powers, authorities, duties or functions of the Commission.
- (3) This section extends to publications made before the commencement of this section.

**17M Matters arising under the *Government Pricing Tribunal Act 1992***

- (1) There is a defence of absolute privilege for a publication to or by the Government Pricing Tribunal or to any member of the Tribunal or member of staff of the Tribunal in his or her capacity as such a member.
- (2) This section applies in relation to any hearing before the Government Pricing Tribunal or any other matter relating to the powers, authorities, duties or functions of the Tribunal.



### **17N Hearings under [Casino Control Act 1992](#)**

There is a defence of absolute privilege for a publication to or by the Casino Control Authority, or the person presiding at an inquiry under section 143 of the [Casino Control Act 1992](#), for the purpose of such an inquiry.

### **17O Matters relating to the HomeFund Commissioner**

- (1) There is a defence of absolute privilege for a publication to or by the HomeFund Commissioner, as HomeFund Commissioner, or to any member of the staff of the HomeFund Commissioner, as such a member.
- (2) Subsection (1) applies in relation to an acting HomeFund Commissioner in the same way as it applies in relation to the HomeFund Commissioner.
- (3) There is a defence of absolute privilege for the publication under section 34 (3) of the [HomeFund Commissioner Act 1993](#) of a report.
- (4) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the [HomeFund Commissioner Act 1993](#), of a copy of a report previously made public under section 34 (3) of that Act.

### **17P Matters arising under [Protected Estates Act 1983](#)**

There is a defence of absolute privilege for a publication of a report to the Protective Commissioner under section 79 of the [Protected Estates Act 1983](#).

### **17Q Matters arising under the [Public Finance and Audit Act 1983](#)**

There is a defence of absolute privilege for a publication to or by the Auditor-General or a member of staff of the Audit Office as such a member of a disclosure made in relation to a complaint under Division 7 of Part 3 of the [Public Finance and Audit Act 1983](#).

### **17QA Matters relating to the [Protected Disclosures Act 1994](#)**

- (1) There is a defence of absolute privilege for a publication to or by a public official or public authority referred to in section 8 (1) (b) or (c) of the [Protected Disclosures Act 1994](#) of a disclosure made to the public official or public authority in relation to an allegation of corrupt conduct, maladministration or serious and substantial waste of public money or local government money if the publication is for the purpose of investigating that allegation.
- (2) In this section, **local government money** includes all revenue, loans and other money collected, received or held by, for or on account of:
  - (a) a council, or
  - (b) a county council,

within the meaning of the *Local Government Act 1993*.

**17R Matters arising under the *Health Care Complaints Act 1993***

- (1) There is a defence of absolute privilege:
  - (a) for a publication to or by the Commission of or concerning a complaint by a complainant under the *Health Care Complaints Act 1993*, and
  - (b) for a publication to or by a conciliator for the purpose of the conciliation of a complaint under the *Health Care Complaints Act 1993*, and
  - (c) for the publication by any such conciliator of a report or information under section 53 or 54 of the *Health Care Complaints Act 1993*.
- (2) There is a defence of absolute privilege:
  - (a) for a publication of a report under section 30 of the *Health Care Complaints Act 1993* (or that section as applied by section 61 of that Act), and
  - (b) for the publication of a report made under section 62 (1) of the *Health Care Complaints Act 1993* by the Health Care Complaints Commission constituted under that Act.

**17S Matters arising under the *Police Integrity Commission Act 1996***

- (1) There is a defence of absolute privilege for a publication:
  - (a) to or by the Police Integrity Commission, or
  - (b) to or by the Commissioner for the Police Integrity Commission as Commissioner, or
  - (c) to or by the Inspector of the Police Integrity Commission as Inspector, or
  - (d) to any officer of the Commission or officer of the Inspector (within the meaning of the *Police Integrity Commission Act 1996*) as such an officer.
- (2) This section applies in relation to any hearing before the Police Integrity Commission or Inspector of the Police Integrity Commission or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector.

**17T Matters relating to the Local Government Pecuniary Interest Tribunal**

- (1) There is a defence of absolute privilege for a publication to or by the Local Government Pecuniary Interest Tribunal constituted under the *Local Government Act 1993* if the publication is made for the purpose of the execution or administration of that Act or if the publication is a publication by that Tribunal of an official report of a decision of that Tribunal or of the reasons of that Tribunal for a decision.

- (2) There is a defence of absolute privilege for a publication to or by the Department of Local Government or the Director-General of that Department if the publication is:
- (a) an official report of a decision of the Local Government Pecuniary Interest Tribunal, or
  - (b) a statement of a decision of that Tribunal or of the reasons of that Tribunal for a decision,
- provided or made public by the Tribunal under section 484 (3) of the *Local Government Act 1993*.

**17TA Matters arising under the *Administrative Decisions Tribunal Act 1997***

There is a defence of absolute privilege for a publication to or by the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* (including a publication by that Tribunal of an official report of a decision of that Tribunal or of the reasons for that decision).

**17TB Matters relating to the Aboriginal Land Councils Pecuniary Interest Tribunal**

- (1) There is a defence of absolute privilege for a publication to or by the Aboriginal Land Councils Pecuniary Interest Tribunal constituted under the *Aboriginal Land Rights Act 1983* if the publication is made for the purpose of the execution or administration of that Act or if the publication is a publication by that Tribunal of an official report of a decision of that Tribunal or of the reasons of that Tribunal for a decision.
- (2) There is a defence of absolute privilege for a publication to or by the Department of Aboriginal Affairs or the Director-General of that Department if the publication is:
- (a) an official report of a decision of the Aboriginal Land Councils Pecuniary Interest Tribunal, or
  - (b) a statement of a decision of that Tribunal or of the reasons of that Tribunal for a decision,
- provided or made public by the Tribunal under section 213 (3) of the *Aboriginal Land Rights Act 1983*.

**17U Reports under the *Mines Inspection Act 1901***

There is a defence of absolute privilege:

- (a) for the publication of a report by an inspector, a mine safety officer, an investigator or a Board of Inquiry, under the *Mines Inspection Act 1901*, to or by the Minister administering that Act or the Director-General of the Department of Mineral Resources, or
- (b) for a publication by a Board of Inquiry in the course of a special inquiry under the

*Mines Inspection Act 1901.*

**18 Proceedings of inquiry**

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.

**19 Report of inquiry**

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 the person in an official report of the result of the inquiry.

**Division 4 Qualified privilege**

**20 Multiple publication**

(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) an occasion is one of qualified privilege if, but only 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 Mistaken character of recipient**

Where:

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

## **22 Information**

(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 the recipient 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.

- (2A) In determining for the purposes of subsection (1) whether the conduct of the publisher in publishing matter concerning a person is reasonable in the circumstances, a court may take into account the following matters and such other matters as the court considers relevant:
- (a) the extent to which the matter published is of public concern,
  - (b) the extent to which the matter published concerns the performance of the public functions or activities of the person,
  - (c) the seriousness of any defamatory imputation carried by the matter published,
  - (d) the extent to which the matter published distinguishes between suspicions, allegations and proven facts,
  - (e) whether it was necessary in the circumstances for the matter published to be published expeditiously,
  - (f) the sources of the information in the matter published and the integrity of those sources,
  - (g) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the publisher to obtain and publish a response from the person,
  - (h) any other steps taken to verify the information in the matter published.
- (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.

### **23 (Repealed)**

## **Division 5 Protected reports etc**

### **24 Protected reports—Schedule 2**

- (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.
- (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 or her 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 or her aware that the material is not a protected report or is not fair.

## **25 Copies etc of official and public documents and records**

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.

## **26 Defeat of defence under secs 24, 25**

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.

## **Division 6 Court notices, official notices etc**

### **27 Court notices**

- (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.

### **28 Official notices etc**

- (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) a council, board or other authority or person 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 General

- (1) The defence or exclusion of liability in cases of 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 Proper material

- (1) For the purposes of this section, but subject to 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) 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.

### **31 Public interest**

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

### **32 Comment of defendant**

- (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.

### **33 Comment of servant or agent of defendant**

- (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 Comment of stranger**

- (1) Subject to sections 30 and 31, it is a defence as to comment that the comment is not, and in its context and in the circumstances of the publication complained of did not purport to be, the comment of the defendant or of any servant or agent of the defendant.
- (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 Effect of defence**

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.

## **Division 8**

### **36-45 (Repealed)**

## **Part 4 Damages and costs**

### **46 General**

- (1) In this Part **relevant harm** means, in relation to damages for defamation:
  - (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) 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.

### **46A Factors relevant in damages assessment**

- (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).

### **47 Truth or falsity of imputation**

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).

### **48 Other recoveries**

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.

#### **48A Costs in proceedings for defamation**

- (1) In awarding costs in respect of proceedings for defamation, the court may have regard to the following matters:
  - (a) the way in which the parties to the proceedings conducted their cases (including any misuse of a party's superior financial position to hinder the early resolution of the proceedings),
  - (b) whether the costs in the proceedings may exceed the quantum of damages to be awarded in the proceedings,
  - (c) such other matters as the court considers relevant.
- (2) Without limiting subsection (1), a court must (unless the interests of justice require otherwise):
  - (a) if proceedings for defamation are successfully brought by a plaintiff and costs in the proceedings are to be awarded to the plaintiff—order costs of and incidental to the proceedings to be assessed on an indemnity basis if the court is satisfied that the defendant unreasonably failed to make a settlement offer or agree to a settlement offer proposed by the plaintiff, or
  - (b) if proceedings for defamation are unsuccessfully brought by a plaintiff and costs in the proceedings are to be awarded to the defendant—order costs of and incidental to the proceedings to be assessed on an indemnity basis if the court is satisfied that the plaintiff unreasonably failed to accept a settlement offer made by the defendant.
- (3) In this section:

**settlement offer** means any genuine offer to settle the proceedings made before the proceedings are determined and includes an offer to make amends (whether made before or after the proceedings are commenced).

## Part 5 Criminal defamation

### 49 Common law criminal libel abolished

- (1) The common law misdemeanour of criminal libel is abolished.
- (2) This section does not affect the law relating to blasphemous, seditious or obscene libel.

### 50 Offence

- (1) A person shall not, without lawful excuse, publish matter defamatory of another living person:
  - (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 offence.
- (4) Proceedings for an offence under this section may not be instituted without the written consent of the Attorney General.
- (5) In any such proceedings, a consent purporting to have been signed by the Attorney General is, without proof of the signature, evidence of that consent.

### 51 Lawful excuse

- (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 publication.
- (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.

## **52 Criminal informations excluded**

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

## **53 Defamatory meaning; verdict**

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.

## **Part 6 Supplemental**

### **54 Evidence of publication etc**

- (1) This section applies to civil proceedings for defamation and to proceedings for an offence under section 50.
- (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 Evidence of criminal offence**

- (1) This section applies to civil proceedings for defamation and to proceedings for an offence under section 50.
- (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 the person committed the offence, and
- (b) if the conviction is by a court of any other country, evidence that the person committed the offence.

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

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

## 56 Criminating answer etc

- (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, the person is not excused from answering that question, or from discovering or producing that document or thing, by reason that to do so may criminate the person or the person's spouse of an offence under section 50 in respect of the publication of that matter.
- (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 the person or the person's spouse for an offence under section 50 in respect of the publication of that matter.
- (3) In this section:

**spouse** of a person, in relation to an answer, discovery or production, includes a person with whom the person has a de facto relationship within the meaning of the [Property \(Relationships\) Act 1984](#) at the time of the answer, discovery or production.

## 56A Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## 57 Damages on failure of a prosecution under sec 50

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.

## 58 Savings and transitional provisions

Schedule 3 has effect.

## Schedule 1 (Repealed)

## Schedule 2 Proceedings of public concern and official and public documents and records

(Sections 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,
- (2) proceedings in public of an international organisation of any countries or of governments of any countries,
- (3) proceedings in public of an international conference at which governments of any countries are represented,
- (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,
- (5) proceedings in public of a court,
- (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,
- (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,

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,
- (8) without limiting the operation of any other subclause, proceedings on an appeal to the Appeal Panel under the [Thoroughbred Racing Act 1996](#),
- (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,
- (10) proceedings of the Ombudsman, so far as those proceedings are included in a report previously made public under section 31 (3) of the [Ombudsman Act 1974](#) or under section 32 (3) or 45 (5) of the [Police Regulation \(Allegations of Misconduct\) Act 1978](#),
- (11) proceedings of the Privacy Commissioner, so far as those proceedings are included in a report previously made public under section 65 of the [Privacy and Personal Information Protection Act 1998](#),
- (12) proceedings at an inquiry conducted by the Equal Opportunity Tribunal constituted

under the *Anti-Discrimination Act 1977* or an investigation, inquiry or examination conducted by or on behalf of the Anti-Discrimination Board constituted under that Act,

- (13) Without limiting the operation of any other subclause, proceedings:
- (a) at an inquiry conducted by the Greyhound and Harness Racing Regulatory Authority in the exercise of its functions (including the exercise of any such functions by a steward of that Authority), and
  - (b) on an appeal to that Authority or the Greyhound and Harness Racing Appeals Tribunal under the *Greyhound and Harness Racing Administration Act 2004*.
- (13A) without limiting the operation of any other subclause, proceedings at an inquiry conducted by Racing New South Wales under the *Thoroughbred Racing Act 1996*,
- (13B) (Repealed)
- (14) without limiting the operation of any other subclause, proceedings on an appeal to the Racing Appeals Tribunal under the *Racing Appeals Tribunal Act 1983*,
- (14A) without limiting the operation of any other subclause, proceedings of:
- (a) the New South Wales Medical Board,
  - (b) a Professional Standards Committee, or
  - (c) the Medical Tribunal,
- under the *Medical Practice Act 1992*,
- (15) proceedings in public of, or proceedings in public at an enquiry held by, the Law Reform Commission under the *Law Reform Commission Act 1967*,
- (16) without limiting the operation of any other subclause, proceedings of:
- (a) the Bar Council,
  - (b) the Law Society Council,
  - (c) (Repealed)
  - (d) the Legal Services Commissioner, or
  - (e) (Repealed)
- under Part 10 of the *Legal Profession Act 1987*,
- (17) without limiting the operation of any other subclause, proceedings of a conciliation officer, conciliator or member of the Commission under the *Workers Compensation*

*Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*,

- (18) proceedings at a public inquiry held before the Independent Commission Against Corruption or at an inquiry held in public before the Inspector of the Independent Commission Against Corruption,
- (19) proceedings at a hearing held in public by the New South Wales Crime Commission,
- (19A) proceedings at a special inquiry conducted by a Board of Inquiry under the *Coal Mines Regulation Act 1982*,
- (19B) proceedings at a special inquiry conducted by a Board of Inquiry under the *Mines Inspection Act 1901*,
- (20) proceedings of the HomeFund Commissioner, so far as those proceedings are included in a report previously made public under section 34 (3) of the *HomeFund Commissioner Act 1993*,
- (21) proceedings at a hearing held in public by the Police Integrity Commission or Inspector of the Police Integrity Commission,
- (22) without limiting the operation of any other subclause, proceedings of the Local Government Pecuniary Interest Tribunal under the *Local Government Act 1993*,
- (23) proceedings held in public of the Administrative Decisions Tribunal,
- (24) without limiting the operation of any other subclause, proceedings of the Aboriginal Land Councils Pecuniary Interest Tribunal under the *Aboriginal Land Rights Act 1983*.

### **Official and public documents and records**

**3** Section 25 applies to the following documents and records:

- (1) any report, paper, votes or proceedings published in any country by order or under the authority of a parliamentary body for that country,
- (2) the debates and proceedings of either House of Parliament published by the Government Printer,
- (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 the court relating to:

- (i) such a judgment, or
  - (ii) the enforcement or satisfaction of such a judgment, or
- (3A) a document that consists of a report made by:
- (a) the New South Wales Medical Board,
  - (b) a Professional Standards Committee, or
  - (c) the Medical Tribunal,
- of its decision or determination in respect of a complaint or an inquiry or appeal, and of the reasons for that decision or determination, under the [Medical Practice Act 1992](#),
- (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,
- (5) a document that consists of a report made by:
- (a) the Bar Council,
  - (b) the Law Society Council,
  - (c) (Repealed)
  - (d) the Legal Services Commissioner, or
  - (e) (Repealed)
- of the decision or determination of that body or person in respect of a complaint, and of the reasons for that decision or determination, under Part 10 of the [Legal Profession Act 1987](#),
- (6) a document that consists of a report made by a conciliation officer, conciliator or member of the Commission of his or her decision or determination in respect of any proceedings under the [Workers Compensation Act 1987](#) or the [Workplace Injury Management and Workers Compensation Act 1998](#) or that consists of a conciliation certificate under section 98D of the [Workers Compensation Act 1987](#) or section 84 of the [Workplace Injury Management and Workers Compensation Act 1998](#),
- (7) a document that consists of a decision (including reasons given for the decision) made by the Local Government Pecuniary Interest Tribunal under the [Local Government Act 1993](#),

- (8) a document that consists of a report made by Administrative Decisions Tribunal of the decision of that Tribunal in respect of any proceedings before it, and of the reasons for that decision, under the *Administrative Decisions Tribunal Act 1997*,
- (9) a document that consists of a decision (including reasons given for the decision) made by the Aboriginal Land Councils Pecuniary Interest Tribunal under the *Aboriginal Land Rights Act 1983*.

## Schedule 3 Savings and transitional provisions

(Section 58)

### Part 1 General

#### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - Defamation (Amendment) Act 1994*
  - Defamation Amendment Act 2002*
- (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 consequent on enactment of **Defamation (Amendment) Act 1994**

#### 2 Definition

In this Part:

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

### 3 Application of amendments

- (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
  - (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.

## Part 3 Provision consequent on enactment of [Local Government Amendment Act 1997](#)

### 4 Local Government Pecuniary Interest Tribunal

An amendment made by Schedule 2.2 [1]-[3] to the [Local Government Amendment Act 1997](#) extends to a publication made before the commencement of the amendment.

## Part 4 Provisions consequent on enactment of [Defamation Amendment Act 2002](#)

### 5 Definition

In this Part:

**amending Act** means the [Defamation Amendment Act 2002](#).

### 6 Application of amendments made by amending Act

- (1) An amendment made to this Act by the amending Act does not apply to:
  - (a) a defamatory imputation published before the commencement of the amendment, or
  - (b) proceedings concerning any such imputation (whether commenced before or after the commencement of the amendment).
- (2) Regulations made as referred to in clause 1 (1) may have effect despite the provisions

of subclause (1), if the regulations so provide.