



NORTHERN TERRITORY
***of* AUSTRALIA**

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HANSARD EXTRACT

DEFAMATION

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How will victims of online defamation be protected? With a single publication rule, how will victims of defamation, particularly in digital spaces, seek redress when harmful material remains online for years?

Will digital platforms be held accountable? The Bill allows platforms to avoid liability if they act within seven days, but are mechanisms in place to ensure they comply? Will there be consequences for platforms that ignore or delay responses to legitimate defamation claims? Are there safeguards to prevent the misuse of absolute privilege?

Although protecting whistleblowers is crucial, are there protections against malice or false complaints to police? Will these changes impact small media organisations and independent journalists? The public interest defence is intended to support responsible journalism, but what guidelines will courts use to determine reasonable belief in public interest reporting?

During the scrutiny committee briefing on this policy, the need for clear public education was raised, particularly for Aboriginal Territorians and members of multicultural communities who may not be aware of these legal changes.

The legal landscape surrounding defamation law is complex. Even before these amendments, many Territorians were not fully aware of their rights and responsibilities under defamation law. With this Bill introducing new thresholds, new defences and new legal procedures, the government must ensure that all members of the community understand these changes. In particular, we must recognise that many Aboriginal Territorians speak English as a second, third, fourth or even fifth language. Many people in migrant and refugee communities may not be familiar with defamation law or legal terminology. Digital platforms are often the primary source of information in these communities, yet they are also the main arena where defamation issues arise.

The opposition calls on the government to commit to a public education strategy that ensures these reforms are communicated clearly, accessibly and culturally appropriately. This should include:

- multilingual resources explaining how the new defamation laws work, particularly in Aboriginal languages and key community languages such as Greek, Filipino, Mandarin and Vietnamese
- community engagement through local organisations, Legal Aid services and interpreters to ensure that those with limited English are not disadvantaged
- workshops or legal clinics in remote communities, where access to mainstream legal information is often limited
- clear, plain English guidance on how serious harm thresholds work and what steps individuals can take if they believe they have been defamed.

Defamation law should be accessible to all Territorians, not just those with legal expertise or strong English literacy. If the government is committed to ensuring fair access to justice, it must also be committed to ensuring that these laws are adequately understood by the communities most likely to be affected.

This Bill represents a much-needed update to our defamation laws. It brings the Northern Territory legislation in line with national standards, protects public interest reporting and recognises the reality of digital communication in today's world. We must ensure that these reforms do not unfairly disadvantage individuals, that digital platforms act responsibly and that access to justice remains fair for all.

The opposition will monitor how these laws are implemented and seek clarification from the government to ensure they function as intended. We support this Bill for now, but we urge the government to address the legitimate concerns we have raised.

Dr RAHMAN (Fong Lim): Madam Speaker, I am delighted to discuss this Bill, which has been on the Notice Paper for some time.

I am also pleased that the opposition has chosen to support the Bill, but provided some pointed remarks about it. It is true that these are long-overdue reforms. What is astonishing to me is that the opposition would raise this matter now and suggest that the reforms are overdue for any reason other than its inability to implement them. The stage 1 reforms were passed in 2020, and every state and Territory in the country bar WA has them in place. We are the only ones who have not done it, and it is because the former government never saw fit to make it a priority.

We are passing legislation at a rate of knots. Some of it is happening faster than people would like, but on issues like this, which are relatively uncontroversial and generally decided upon by both sides of parliament as a useful thing to do, we have not made any progress at all. We just had some niche critiques of what might be problematic about these defamation model provisions, so it is useful to zoom out and understand the bigger picture of what this is, what it will do and why it is a good thing. Perhaps that will lay the groundwork for how we might proceed with legislative reform in other important areas.

First up, for the uninitiated, defamation is a body of law that aims to protect individuals, groups and entities from the publication of false and damaging statements that can cause harm to reputation or standing in society. What does it take to do that? An action in defamation requires a number of things. First of all, it requires proof of statements that have been communicated by publishing to a third party, whether those things are written, spoken or electronic. It similarly requires that those statements identified will be about a plaintiff and also that they be actually defamatory and have caused or are likely to cause the plaintiff harm because of a negative claim about the plaintiff.

The Northern Territory has defamation law, of course. We have the *Defamation Act 2006* which is the Act that promotes uniform application of defamation in Australia. The objects of the Act that we have at the moment, aside from promoting uniformity, are to:

- ensure that the law of defamation does not place any unreasonable limits on freedom of expression and, in particular, on the publication and discussion of important matters of public interest and importance
- provide effective and fair remedies for persons whose reputations are harmed by the publication of defamatory matter
- promote speedy and non-litigious methods of resolving disputes about the publication of defamatory matter.

It is worth laying that as a foundation because from what we just heard you would think that defamation law was to be remade into something new, whereas in fact the existing *Defamation Act* seeks to ensure that the law does not place unreasonable limits on freedom of expression and fair remedies are provided. Non-litigious conflict resolution options are also built in.

Why are we doing this? Why is this a good thing? Why is it that the rest of the country already thought about this and got on with it a long time ago? It is because of the virtues of building upon model legislation to create uniformity. The idea is that model laws lead to model justice. In other parts of the country, stage 1 reforms were implemented long ago and stage 2 reforms have not been uniformly implemented. If we were to implement both by enacting this Bill then the Northern Territory will become the fourth jurisdiction to implement stage 1 and 2 of the defamation reform.

Let us go back a step. What is all this based on? It is the model defamation provisions. In November 2004 the model defamation provisions were discussed by the Standing Council of Attorneys-General. That is what led to our 2006 Act. More often than not when we do sensible things with law here it is not by being the vanguard and too bolshie; it is by seeing what is happening in other places—where perhaps there is more access to resources to fairly consider what might be done—and once we have the benefit of that wisdom, making things work in our local context. That is exactly what happened with our 2006 provisions. That, of course, does not exonerate the former government from failing to do anything with the stage 1 reforms for the last four years. However, I digress.

The Standing Council of Attorneys-General in 2018 met again to say, 'Perhaps we should review those model defamation provisions'. That led to a two-stage review process which has been alluded to—the stage 1 and stage 2 process. Stage 1 was led by New South Wales predominantly, and it was also involved in part A of stage 2. That was about the Model Defamation Amendment Provisions 2020. Victoria led the part B stage 2 reforms.

The overall benefit of this package is to eliminate forum shopping and to allows the law to better catch up to the challenges of the digital age with regard to social media in particular. This is the part where everybody in this House should pay attention because—for the most part we think, 'Defamation law is not my problem; it will not be an issue for me; I am not really paying attention; we have all agreed, so let us vote on it'—there was an important High Court case called *Voller* in 2021.

Voller is the law that we need to be apprised of in this place because it determines what can and cannot be defamatory in the context of the digital age. Different standards apply on Facebook from Instagram, your website or a Google search engine. What you do in your everyday political lives is up for challenge for

defamation and the rules and standards are incredibly different. If I have one takeaway piece of advice it would be that everybody has a look at the *Voller* High Court case.

Basically, one of the primary objectives of the stage 2 reforms is to limit the effect of the High Court of Australia decision in *Fairfax Media Publications Pty Ltd v Voller* [2021] 273 CLR 346, especially with respect to what the reforms describe as digital intermediaries. There is now effectively a new defence for digital intermediaries for online third-party content. In *Voller* third parties left allegedly defamatory content about Mr Voller on posts made on Facebook pages of three media organisations. The High Court found that these media companies could be sued for defamation as publishers of those third-party comments.

What is the benefit of the stage 2 reforms? Under the stage 2 reforms, a person or entity will be a digital intermediary if they provide or administer an online service—for example, a website or a social media platform—where a defamatory digital matter is published, provided they are not the author, originator or poster of the matter.

In response to *Voller*, the reforms create a new digital defence for digital intermediaries who will not be liable for an action in defamation if:

1. they can prove they have an accessible complaints mechanism—which is the defence that the Member for Gwoja should be interested in—to receive written complaints about defamatory content on their online platform, such as an email address or complaint submission webpage
2. assuming the written complaint is in a form that complies with the applicable legislation, they prove that they took reasonable steps to remove, block or disable or prevent access to any such matter within seven days of receiving the complaint.

This defence can still be defeated if the digital intermediary is motivated by malice in providing the online platform by which the defamatory matter came to be published ...

Mr Paech: No ministership for you.

Dr RAHMAN: I am sorry, Member for Gwoja, am I interrupting you? No? I was just double-checking.

Separately ...

Mr PAECH: A point of order, Madam Speaker! I think he is finished ...

Madam SPEAKER: Please take your seat, Member for Gwoja.

Mr PAECH: I am happy to put Standing Order 44.

Madam SPEAKER: Standing Order ...

Mr PAECH: I move that the question be put.

Madam SPEAKER: The motion is that the question be put.

Motion not agreed to.

Madam SPEAKER: Member for Fong Lim, please continue. Let us pay him some respect.

Dr RAHMAN: I am a little sad about that. I cannot believe that a member would seek to gag debate on important legislative reform ...

Mr Paech: Yes, I know; that is why we are supporting the government. Get on with it.

Dr RAHMAN: I am sorry that it is boring you to have to do real legal work that you failed to do in your term as the Attorney-General.

Mr Paech: You will never be a minister. Get over it.

Madam SPEAKER: Member for Gwoja, you are on a warning.

Dr RAHMAN: Separately, a digital intermediary providing caching, conduit or storage services will be exempt from the liability if they publish any defamatory matter in the course of providing those services. Now that exemption will not be available to a digital intermediary that participates in, encourages or promotes the publication of that defamatory matter, unless they are required to do so by law or a court or tribunal order.

These are important changes that bring us into line with the rest of the country. They put us in line with best practice. These are important things to consider, and it is laughable to think that they are not worthy of discussion here because it does not provide an opportunity for the opposition to grandstand.

There are exemptions also for search engine providers for search engine results, which is another thing that is important now, because the exemptions draw on the findings of the majority of the High Court in *Google LLC v Defferos* [2022], where Google was found not to be a publisher of defamatory news articles by reason of a search result, including a hyperlink to that article.

These changes are bringing us to the modern standard in the modern world. You want laws that reflect modern standards and best practice, so pay attention.

The expansion of the absolute privilege defence to defamatory reports matters published to police is also important, especially if you are concerned about people being able to make statements against the police. This reform is intended to provide greater comfort to persons making reports to police, which is important in that they will not be liable for defamation if they make a police report about someone. Practitioners advising clients will know that the subject of a police matter is a serious thing, and they should be mindful of this. This will afford people making the report with a complete defence to any potential defamation claim.

Defamation law frequently falls down in the service of notices. Under the stage 2 reforms, a notice can now be validly served electronically, which is important because you can send it by email, message and other electronic communication to make sure that a recipient has received it, for the purpose of giving or receiving documents on them.

The fact is that defamation laws are not uniform across the country. This is an opportunity for the Northern Territory to enact the stage 1 reforms, which it should have done long ago but failed to do because of the ineptitude of the former government. This is also a chance for us to get ahead of the curve by enacting the stage 2 reforms. We will be only the fourth jurisdiction in the country to catch up to the digital age, which is increasingly important for us to do.

I will not say terribly much more other than to note that the stage 1 reforms benefit us in a number of ways. They address the standard of serious harm, which should have been done long ago. They mandate concerns notices prior to proceedings, which should have been done long ago. They provide defences for public interest and peer-reviewed publications, which should have been done long ago. The stage 2 reform benefits will also include things like the new innocent dissemination defence.

I will not say anything more for fear of imposing on the opposition any further to have a substantive debate. What I will say is that the Attorney-General's second reading speech was comprehensive, as was the explanatory statement. This was one of the better explanatory statements that we have seen recently, as distinct from half of the ones from the previous government. I found typographical errors in them, because of the lazy process the former government ran.

The amendments will likely streamline core processes and will improve the legal test for damage to the plaintiff.

I support working cooperatively in this place and am frustrated by the fact that at the moment most of what we do in here is like playing chess with pigeons—it is ridiculous—people just defecating on the board and kicking the pieces over; act like a goddamn grown-up!

I support the move towards consistency and creating harmonisation of law with other jurisdictions.

I commend the Defamation Legislation Amendment Bill 2025 to the Assembly. I hope that you will all take seriously these important legal changes to improve our legal edifice.

Ms BOOTHBY (Attorney-General)(in reply): Madam Speaker, I thank all the members who contributed to this important debate on the Defamation Legislation Amendment Bill 2025, as part of our government's legal reform agenda.