

2001

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

DEFAMATION BILL 1999

GOVERNMENT AMENDMENTS

SUPPLEMENTARY EXPLANATORY MEMORANDUM

**Circulated by authority of
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Attorney-General**

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GOVERNMENT AMENDMENTS

Government Amendment 1 – Clause 4

This is a technical amendment that will delete a machinery provision in the Bill (dealing with notes in the Bill).

Government Amendment 2 – Clause 6

The amendment modifies clause 6 of the Act (dealing with an offer to make amends).

Paragraph (g) is a mandatory requirement (an offer of amends must include an offer to pay expenses).

Paragraph (h) has no changes.

Paragraph (i) allows an offer of amends to include economic loss (ie, actual damage – not injury to feelings etc).

Paragraph (j) allows an offer of amends to include an offer to pay compensation for harm to the aggrieved person's reputation but only if the defamation imputes criminal behaviour.

Government Amendment 3 – Clause 6

The amendment modifies clause 6 to allow an offer to pay compensation to be expressed to be an offer to pay a specific amount or an amount decided by a court or through arbitration.

Government Amendment 4 – Clause 6

The amendment modifies clause 6 to restrict the period in which an offer to make amends is made. In effect, it restricts the period to 14 days after an aggrieved person tells the publisher that the matter in question is or may be defamatory.

Government Amendment 5 – Clause 7

This is a technical amendment to section 7 to clarify the operation of the provision. The amendment makes it clear that the Court must have regard to prominence and period of time in assessing reasonableness.

Government Amendment 6 – Clause 7

This is a technical amendment to section 7 to make it clear that a court may consider other matters in addition to the two matters particularly emphasised in clause 7(1)). Note that the Court is obliged to consider the offer generally (ie, the matters in section 6) under section 10(1)(c).

Government Amendment 7 – Clause 8

This amendment is consequential to amendment 3.

Government Amendment 8 – Clause 10

This amendment corrects an error in the Bill. The reference to “Supreme Court” should have been a reference, generally to “court” as defamation actions can take place in any of a number of ACT Courts.

Government Amendment 9 – Clause 11

In clause 11, given the nature of the order, it is appropriate that the order is made by the Supreme Court, rather than an inferior court. This amendment corrects a reference to “court” in subsection (2) of the provision.

Government Amendment 10 – Clause 16

Omits clause 16 (which provided for truth alone) and restores the defence of truth and public benefit.

Government Amendment 11 – Clause 22

Restores the defence of apology and payment into court.

Government Amendment 12 – Clause 23

This amendment provides that, for the purposes of section 23(1), published matter was not published negligently if:

- reasonable steps were taken to ensure the accuracy of the published matter; and
- a reasonable opportunity to comment on the published matter was given to the plaintiff.

Government Amendment 13 – Clause 26

As Government Amendment 8.

Government Amendment 14 – Division 4.3

Division 4.3, which dealt with the procedural rules for summary proceedings in criminal defamation, is unnecessary (these issues are dealt with by modern provisions of general application). Accordingly, this amendment deletes it.

Government Amendment 15 – Clause 44

As Government Amendment 8.

Government Amendment 16 – Clause 45

Technical, consequential on the passage of the *Legislation Act 2001*.

Government Amendment 17 – Dictionary

Inserts a definition of 'court' to make it clear that relevant applications can only be made to a court of competent jurisdiction..