



Mark Speakman
Attorney General

STATEMENT

Tuesday, 4 December 2018

NATIONAL DEFAMATION REFORM MOVES AHEAD

I am pleased to release terms of reference approved by the Council of Attorneys-General (CAG) to guide the national defamation reform process.

The Council, consisting of Attorneys-General from every Australian jurisdiction, has appointed a Defamation Working Party (DWP) to examine defamation law in Australia and identify areas for reform.

Responsibility for defamation law falls to individual states and territories, but in the digital age where publications cross state and territory boundaries, a national approach to reform is essential.

NSW is delighted to be leading the process to review our national model defamation laws. A representative of the NSW Department of Justice will chair the DWP, which will also include the state's Solicitor General Michael Sexton SC.

Australian defamation laws need updating to take into account online platforms that were only beginning to emerge at the time that the CAG's predecessor (Standing Committee of Attorneys-General) approved model defamation provisions in 2005.

It follows that the impact of technological change will be a significant focus of the DWP's work. To drive that process, CAG has announced that it has asked the DWP to issue a discussion paper in early 2019.

The CAG has agreed to develop by the end of this year an expeditious and realistic timetable for the DWP to deliver its recommendations for defamation reform.

The purpose of defamation law is to balance freedom of speech with the right of individuals to protect their reputations. Media companies, internet service providers, social media platforms and plaintiffs' advisors will each have different views of where that balance should lie. A robust public process will ensure that all views are considered.

The DWP therefore has a demanding task in shaping the future of Australia's defamation law. I don't propose, for the time being, to be offering the DWP public advice while its work continues.

Council of Attorneys General Defamation Working Party Terms of Reference

1. The Defamation Working Party (**DWP**) is comprised of one nominated representative from each Australian state and territory jurisdiction and established under the auspices of the Council of Attorneys General (**CAG**). The DWP is to be chaired by a representative from the New South Wales (**NSW**) Department of Justice. NSW will also be represented by its Solicitor General. All other jurisdictions will have one nominated representative.
2. The DWP will consider whether the policy objectives of the Model Defamation Provisions (**MDPs**) remain valid and whether the MDPs remain appropriate to achieve these objectives. The objectives of the MDPs are stipulated in section 3 and are as follows:
 - (a) to enact provisions to promote uniform laws of defamation in Australia;
 - (b) to ensure that the law of defamation does not place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of matters of public interest and importance;
 - (c) to provide effective and fair remedies for persons whose reputations are harmed by the publication of defamatory matter; and
 - (d) to promote speedy and non-litigious methods of resolving disputes about the publication of defamatory matter.
3. In considering the above, the DWP will have reference to the following:
 - (a) the recommendations and findings of the June 2018 statutory review of the *Defamation Act 2005* (NSW);
 - (b) any proposals for reform tabled by individual members of the DWP;
 - (c) relevant developments in case law in Australian jurisdictions and internationally;
 - (d) relevant developments in technology since the commencement of the MDPs; and
 - (e) any other relevant matters.
4. The DWP will make recommendations to CAG for any reforms to the MDPs it considers necessary and report on progress to each CAG meeting.