Philip Doust
[redacted]

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Review of Model Defamation Provisions
C/0 Justice Strategy and Policy Division
NSW Department of Justice
GPO Box 31
Sydney NSW 2001

Email: policy@justice.nsw.gov.au

RE – Review of Model Defamation Provisions

As a patent holder and author, I am grateful for the opportunity to provide a submission on the Council of Attorneys-General's (***COAG***) 'Review of Model Defamation Provisions' (***Discussion Paper***).

From my perspective, I see the existing defamation laws as an infringement on the sovereign right for people such as myself to speak out about controversial matters, as contentious subjects will often contain highly defamatory material.

Any reform of the defamation provisions must have as their foundation clear, unambiguous, legally defendable statements that it is every person's right to speak the truth irrespective of implications. As further clarified with the defamation defences of substantial truth, qualified privilege and political communication.

I point the committee, to the clarified International Covenant on Civil and Political Rights treaty (***ICCPR***), which states that everyone has the right to freedom of expression in accordance with article 19 of this treaty.

I would also refer COAG to the findings in **Doust v Hammond Legal Pty Ltd [2018] WADC 162** and the banning of my book "***Crimes against Justice***" (***Book***).

In this case, the separation of the truth and defamation was not followed by the Australian Legal System. The court proceedings clearly state that the author wrote the truth, but this truth was defamatory and so the Book was banned. This finding is a complete contradiction of Article 19 of the UN treaty.

Background

The findings in **Doust v Hammond Legal Pty Ltd [2018] WADC 162** refer to my attempts as an author to publish matters concerning the '***Printer Cartridge Scandal***' which detailed the defrauding of the West Australian Government and others out of millions of dollars.

As detailed in this judgement, I sought comment before publishing my Book following Part 3 of The Defamation Act [2005] (**Act**) "***Resolution of Civil Disputes without litigation***".

On receipt of several chapters in my Book concerning a Mr M (Legal Practitioner) all the defamation, practitioners involved adopted similar terminologies such as;

> ***"Additionally, the Plaintiff does not seek to restrain the Defendant from publishing material in relation to the Plaintiff – as long as such material is not false or defamatory."***

In other words, the Australian legal system has chosen to treat defamation and truth as the same issue. Defamation law states that material can be defamatory and not actionable while it can be defamatory yet substantially true. And therefore surely, the truth must be brought to light irrespective of its implications, as the truth is the truth! Covering up the truth when it is defamatory has vast consequences for the very foundation of life in Australia and the legal system itself.

Additionally, the ICCPR human rights treaty in article 19 states that "***loosely worded edits***" are unacceptable in denying freedom of expression as detailed in or "***words similar thereto***" as they place an unjust requirement on a publisher in knowing what is being required of him.

The District Court of Western Australia

The judgement in **Doust v Hammond Legal Pty Ltd [2018] WADC 162 justifies banning the Book** solely based on its defamatory nature. The decision refers to "***poking a bear***" (14 - 15) of 10 working days (14 days in total) by an author as required by law in Part 3 of the Act and a creditability issue as justification in banning the Book.

The judgment refers to (19) "***potentially ruinous litigation***" concerning defamatory material despite a three-day hearing when no factual errors could be found in the Book while the evidence from an independent forensic scientist largely supported the Books highly defamatory version of events.

The background behind the Background

As an example of the personal damage by not separating the truth from defamation can have on an individual I bring to the committee's attention what has happened to me as a result of this lack of separation. The court's judgement 7 – 11 refers to the fact that I as an author have never accepted the court's findings (***possible malice***) in the fraud case and that an assault charge made against me had not served the interest of justice, which remains my freedom of expression right.

Concerning the "***Printer Cartridge Scandal***", I am one of many who remains of the view that those who have perpetrated this fraud should have been brought to justice and that it remains unacceptable that many have not been brought before the courts and convicted. The judgement also refers to Mr M (***legal practitioner***) complaint to police where I was charged with assault and acquitted by the court as the magistrate found;

"*I find the force used by the accused was proportionate to the degree of provocation and was not intended nor as such was it likely to cause death or grievous bodily harm. I, therefore, find that the prosecution has failed to negate the defence of provocation. The accused response was none other than a proportionate response towards Mr M actions. The assault was not unlawful; the charge is therefore not proven and dismissed."*

As further detailed in this District Court judgement, the not guilty finding was overturned by the Supreme Court of Western Australia in ***Meyers v Doust [2008] WASC*** (41) "*unless the finding is unreasonable or unjust*" ***House v The King [1936] 55 CLR 499 112.***

The omission of the four words by the court "***based upon the facts*** *the finding is unreasonable or unjust*" is contained in this Supreme Court judgement and was the basis of the magistrate's findings being overturned by the court.

The matter was appealed, and the Supreme Court of Appeal dismissed the appeal with the following findings.

"I should add that even if, contrary to my opinion, the magistrate held or should have held that Mr M 'hand gesture' involved Mr M wagging his index finger, with other fingers closed in a fist. And even if such an action constituted a wrongful act or insult, the action would not in my view, be such as to deprive an ordinary person of self-control and induce him to assault the person offering the act or insult."

The courts of Western Australia are an arm of the Australian Government, and the Australian Government has signed the ICCPR treaty under article 19 of this treaty which guarantees all Australian citizens with the right of freedom of expression in accordance with the law (Act).

The **Doust v Hammond Legal Pty Ltd [2018] WADC 162** judgement refers to any underkings between a plaintiff and a publisher under the Act as being "***nonsensical***" and by omission makes no reference to the court's obligations in ensuring freedom of expression as a democratic human right.

The court further details the confusion with the legal advice about the publishing of the Book as detailed in the Act.

"*You are not being required to consent to any matters that contravene or weaken your position under the Defamation Act. I am of the view that your position is stronger now*."

Conclusion

Unless the Australian Government meets its obligations with defamation reforms as required by the ICCPR treaty guaranteeing freedom of expression, vested interest will continue to use defamation laws in suppressing free speech contrary to the legal requirements in maintaining a democratic and free society.

Kind Regards,

Philip Doust.