

# FACT SHEET

## Defamation Amendment Bill 2024

The Defamation Amendment Bill 2024 (the Bill) will enact the Model Defamation Amendment provisions agreed by the Standing Council of Attorneys-General (SCAG) at its meeting on 22 September 2023.

SCAG's Stage 2 Review of the Model Defamation Provisions was conducted since 2021 and involved detailed policy analysis and two rounds of national public consultation.

The Stage 2 Review comprised of two parts. Part A was led by New South Wales and addressed the question of digital intermediary liability for the publication of third-party content. Part B was led by Victoria and considered whether absolute privilege should be extended to cover reports of criminal and unlawful conduct such as sexual harassment and sexual assault to police and other complaints-handling bodies.

The Part A model amendments aim to strike a better balance between protecting reputations and not unreasonably limiting freedom of expression in the various circumstances where third parties publish defamatory matter via digital intermediaries.

The Part B model amendments address the chilling effect that the potential threat of defamation proceedings may have on people making reports of alleged criminal and unlawful conduct, or misconduct, to police and some other complaints-handling bodies, through consideration of agreed guiding principles.

The Bill amends the *Defamation Act 2005* to provide for:

- a conditional exemption from defamation liability for conduit, caching and storage services, and for search engines in relation to organic search results;
- updates to the mandatory requirements for an offer to make amends for online publications;
- a requirement for courts to consider balancing factors when making preliminary discovery orders against digital intermediaries;
- a new innocent dissemination defence for digital intermediaries, subject to a simple complaints process;
- a specific power for courts to make non-party orders against digital intermediaries to prevent access to defamatory matter online;
- expanded electronic means by which notices can be delivered; and
- an extension of absolute privilege to matter published to police, and the Anti-Discrimination Commissioner.

The Bill is to commence on Royal Assent.