

Serial 13
Defamation Legislation Amendment Bill 2025
Ms Boothby

A Bill for an Act to amend the *Defamation Act 2006*, the *Limitation Act 1981*
and the *Local Court (Criminal Procedure) Act 1928*

NORTHERN TERRITORY OF AUSTRALIA

DEFAMATION LEGISLATION AMENDMENT ACT 2025

Act No. [] of 2025

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2025

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An Act to amend the *Defamation Act 2006*, the *Limitation Act 1981* and the
Local Court (Criminal Procedure) Act 1928

[Assented to [] 2025]
[Introduced [] 2025]

10 The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Defamation Legislation Amendment Act 2025*.

15

2 Commencement

- (1) This Act (except Part 3) commences on the day after the day on which the Administrator's assent to this Act is declared.
- (2) Part 3 commences immediately after Part 2.

Part 2 Amendments to Defamation Act 2006 and related amendments to other Acts

20

Division 1 Defamation Act 2006

3 Act amended

This Division amends the *Defamation Act 2006*.

4 Section 3 amended (Definitions)

(1) Section 3

omit

, unless the contrary intention appears

5 (2) Section 3

insert

applicable period, for an offer to make amends, see section 13.

associated entity, see section 50AAA of the *Corporations Act 2001* (Cth).

10 ***concerns notice***, see section 11A.

excluded corporation, see section 8.

further particulars notice, see section 11A(3).

5 Section 8 amended (Certain corporations do not have cause of action for defamation)

15 (1) Section 8(2)(b)

omit, insert

(b) it has fewer than 10 employees and is not an associated entity of another corporation;

(2) Section 8(4)

20 *omit*

(3) Section 8(6)

insert

employee, in relation to a corporation, includes any individual (whether or not an independent contractor) who is:

25 (a) engaged in the day-to-day operations of the corporation other than as a volunteer; and

(b) subject to the control and direction of the corporation.

6 Section 9 amended (No cause of action for defamation of, or against, deceased persons)

(1) Section 9, before "A person"

insert

5 (1)

(2) Section 9, at the end

insert

10 (2) Subsection (1) does not prevent a court, if it considers it in the interests of justice to do so, from determining the question of costs for proceedings discontinued because of that subsection.

7 Section 9A inserted

After section 9, in Part 2, Division 2

insert

9A Serious harm element of cause of action for defamation

15 (1) It is an element (the **serious harm element**) of a cause of action for defamation that the publication of defamatory matter about a person has caused, or is likely to cause, serious harm to the reputation of the person.

20 (2) For the purposes of subsection (1), harm to the reputation of an excluded corporation is not serious harm unless it has caused, or is likely to cause, the corporation serious financial loss.

(3) The judicial officer in defamation proceedings is to determine whether the serious harm element is established.

25 (4) Without limiting subsection (3), the judicial officer may (whether on the application of a party or on the judicial officer's own motion):

(a) determine whether the serious harm element is established at any time before the trial for the proceedings commences or during the trial; and

30 (b) make any orders the judicial officer considers appropriate concerning the determination of the issue (including dismissing the proceedings if satisfied the element is not established).

(5) If a party applies for the serious harm element to be determined before the trial for the proceedings commences, the judicial officer

is to determine the issue as soon as practicable before the trial commences unless satisfied that there are special circumstances justifying the postponement of the determination to a later stage of the proceedings (including during the trial).

5 (6) The matters a judicial officer may take into account in deciding whether there are special circumstances for the purposes of subsection (5) include (but are not limited to) the following:

(a) the cost implications for the parties;

(b) the resources available to the court at the time;

10 (c) the extent to which establishing the serious harm element is linked to other issues for determination during the trial for the proceedings.

15 (7) Without limiting subsection (5), the judicial officer may determine the serious harm element is not established on the pleadings without the need for further evidence if satisfied that the pleaded particulars are insufficient to establish the element.

(8) Nothing in this section limits the powers that a judicial officer may have apart from this section to dismiss defamation proceedings (whether before or after the trial commences).

20 **8 Part 3, Division 1 heading amended**

Part 3, Division 1, heading

omit

Offers

insert

25 **Concerns notices and offers**

9 Sections 11A and 11B inserted

After section 11

insert

11A Concerns notices

30 (1) For the purpose of this Act, a notice is a **concerns notice** if:

(a) the notice:

(i) is in writing; and

- 5
- (ii) specifies the location where the matter in question can be accessed; and
- (iii) informs the publisher of the defamatory imputations that the aggrieved person considers are or may be carried about the aggrieved person by the matter in question; and
- 10
- (iv) informs the publisher of the harm that the person considers to be serious harm to the person's reputation caused, or likely to be caused, by the publication of the matter in question; and
- 15
- (v) for an aggrieved person that is an excluded corporation – also informs the publisher of the financial loss that the corporation considers to be serious financial loss caused, or likely to be caused, by the publication of the matter in question; and
- (b) a copy of the matter in question is, if practicable, provided to the publisher together with the notice.

Example for subsection (1)(a)(ii)

A webpage address.

- 20
- (2) To avoid doubt, a document that is required to be filed or lodged to commence defamation proceedings cannot be used as a concerns notice.
- 25
- (3) If a concerns notice fails to particularise adequately any of the information required by subsection (1)(a)(ii), (iii), (iv) or (v), the publisher may give the aggrieved person a written notice (a **further particulars notice**) requesting that the aggrieved person provide reasonable further particulars as specified in the further particulars notice about the information concerned.
- 30
- (4) An aggrieved person to whom a further particulars notice is given must provide the reasonable further particulars specified in the notice within 14 days (or any further period agreed by the publisher and aggrieved person) after being given the notice.
- 35
- (5) An aggrieved person who fails to provide the reasonable further particulars specified in a further particulars notice within the applicable period is taken not to have given the publisher a concerns notice for the purposes of this section.

Note for section 11A

Section 11B requires a concerns notice to be given before proceedings for defamation can be commenced.

11B Defamation proceedings cannot be commenced without concerns notice

(1) An aggrieved person cannot commence defamation proceedings unless:

- 5
- (a) the person has given the proposed defendant a concerns notice in respect of the matter concerned; and
 - (b) the imputations to be relied on by the person in the proposed proceedings were particularised in the concerns notice; and
 - 10 (c) the applicable period for an offer to make amends has elapsed.

(2) Subsection (1)(b) does not prevent reliance on:

- (a) some, but not all, of the imputations particularised in a concerns notice; or
- 15 (b) imputations that are substantially the same as those particularised in a concerns notice.

(3) The court may grant leave for proceedings to be commenced despite non-compliance with subsection (1)(c), but only if the proposed plaintiff satisfies the court:

- 20
- (a) the commencement of proceedings after the end of the applicable period for an offer to make amends contravenes the limitation law; or
 - (b) it is just and reasonable to grant leave.

25 (4) The commencement of proceedings contravenes the limitation law for the purposes of subsection (3)(a) if the proceedings could not be commenced after the end of the applicable period for an offer to make amends because the court will have ceased to have power to extend the limitation period.

(5) In this section:

30 ***limitation law***, see section 12(2)(b), Part III, Division 3 and Part V, Division 3 of the *Limitation Act 1981*.

10 Section 13 amended (When offer to make amends may be made)

(1) Section 13(1)(a)

omit, insert

5 (a) the applicable period for an offer to make amends has expired; or

(2) Section 13(2) to (5)

omit, insert

10 (2) For the purposes of this Act, the applicable period for an offer to make amends is:

15 (a) if the aggrieved person has provided further particulars in response to a further particulars notice about a concerns notice after 14 days have elapsed since the concerns notice was given – 14 days since the publisher was given the further particulars; or

(b) in any other case – 28 days since the publisher was given a concerns notice by the aggrieved person.

(3) If a publisher gives more than one further particulars notice, subsection (2)(a) applies only in respect of the first notice.

20 **11 Section 14 amended (Content of offer to make amends)**

(1) After section 14(1)(b)

insert

(ba) must provide for the offer to be open for acceptance for at least 28 days commencing on the day the offer is made; and

25 (2) Section 14(1)(d), after "correction of"

insert

, or a clarification of or additional information about,

(3) Section 14(1)(f)

omit

30 offer; and

insert

offer.

(4) Section 14(1)(g)

omit

5 (5) After section 14(1)

insert

10 (1A) In addition to the matters referred to in subsection (1), an offer to make amends may include any other kind of offer, or particulars of any other action taken by the publisher, to redress the harm sustained by the aggrieved person because of the matter in question, including (but not limited to):

15 (a) an offer to publish, or join in publishing, an apology in relation to the matter in question or, if the offer is limited to any particular defamatory imputations, the imputations to which the offer is limited; or

(b) if the matter has been published on a website or any other electronically accessible location – an offer to remove the matter from the website or location; or

20 (c) an offer to pay compensation for any economic or non-economic loss of the aggrieved person; or

(d) the particulars of any correction or apology made, or action taken, before the date of the offer.

(6) Section 14(2)

omit

25 (1)(g)(ii)

insert

(1A)(c)

12 Section 17 amended (Effect of failure to accept reasonable offer to make amends)

(1) Section 17(1)(a)

omit, insert

- 5 (a) the publisher made the offer as soon as reasonably practicable after the publisher was given a concerns notice in respect of the matter (and, in any event, within the applicable period for an offer to make amends); and

(2) Section 17(1)(b)

10 *omit*

at any time before the trial

13 Section 20 replaced

Section 20

repeal, insert

15 **20 Leave required for multiple proceedings in relation to publication of same defamatory matter**

- 20 (1) This section applies to a person who has brought defamation proceedings for damages, whether in this jurisdiction or elsewhere, against a person (a **previous defendant**) in relation to the publication of a matter.

- 25 (2) The person may not bring further defamation proceedings for damages against a previous defendant or an associate of a previous defendant in relation to the same or any other publication of the same or like matter, except with the leave of the court in which the further proceedings are to be brought.

- (3) A person is an **associate of a previous defendant** if, at the time of the publication to which the previous defamation proceedings related, the person was:

- 30 (a) an employee of the defendant; or
(b) a person publishing matter as a contractor of the defendant; or
(c) an associated entity of the defendant (or an employee or contractor of the associated entity).

14 Section 23 replaced

Section 23

repeal, insert

23 Defence of contextual truth

- 5 (1) It is a defence to the publication of defamatory matter if the defendant proves that:
- (a) the matter carried one or more imputations that are substantially true (***contextual imputations***); and
- 10 (b) any defamatory imputations of which the plaintiff complains that are not contextual imputations and are also carried by the matter do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.
- 15 (2) The contextual imputations on which the defendant may rely to establish the defence include imputations of which the plaintiff complains.

15 Section 26A inserted

After section 26

insert

26A Defence of publication of matter concerning issue of public interest

- 20 (1) It is a defence to the publication of defamatory matter if the defendant proves that:
- (a) the matter concerns an issue of public interest; and
- 25 (b) the defendant reasonably believed that the publication of the matter was in the public interest.
- (2) In determining whether the defence is established, a court must take into account all of the circumstances of the case.
- 30 (3) Without limiting subsection (2), the court may take into account the following factors to the extent the court considers them applicable in the circumstances:
- (a) the seriousness of any defamatory imputation carried by the matter published;

- 5 (b) the extent to which the matter published distinguishes between suspicions, allegations and proven facts;
- (c) the extent to which the matter published relates to the performance of the public functions or activities of the person;
- 10 (d) whether it was in the public interest in the circumstances for the matter to be published expeditiously;
- (e) the sources of the information in the matter published, including the integrity of the sources;
- 15 (f) if a source of the information in the matter published is a person whose identity is being kept confidential, whether there is good reason for the person's identity to be kept confidential;
- (g) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person;
- 20 (h) any other steps taken to verify the information in the matter published;
- (i) the importance of freedom of expression in the discussion of issues of public interest.

20

Example for subsection (3)(f)

To comply with an applicable professional code or standard.

- (4) Subsection (3) does not:
- (a) require each factor referred to in that subsection to be taken into account; or
- 25 (b) limit the matters that the court may take into account.

16 Section 27 amended (Defence of qualified privilege for provision of certain information)

Section 27(3)

omit, insert

30

- (3) In determining for the purposes of subsection (1) whether the conduct of the defendant in publishing matter about a person is reasonable in the circumstances, a court may take into account the following factors to the extent the court considers them applicable in the circumstances:

- 5
- (a) the seriousness of any defamatory imputation carried by the matter published;
 - (b) the extent to which the matter published distinguishes between suspicions, allegations and proven facts;
 - (c) the nature of the business environment in which the defendant operates;
 - (d) whether it was appropriate in the circumstances for the matter to be published expeditiously;
 - 10 (e) any other steps taken to verify the information in the matter published.

(3A) Subsection (3) does not:

- (a) require each factor referred to in that subsection to be taken into account; or
 - (b) limit the matters that the court may take into account.
- 15 (3B) It is not necessary to prove that the matter published concerned an issue of public interest to establish the defence of qualified privilege under subsection (1).

17 Section 27A inserted

After section 27

20 *insert*

27A Defence of scientific or academic peer review

- (1) It is a defence to the publication of defamatory matter if the defendant proves that:
- 25 (a) the matter was published in a scientific or academic journal (whether published in electronic form or otherwise); and
 - (b) the matter relates to a scientific or academic issue; and
 - (c) an independent review of the matter's scientific or academic merit was carried out before the matter was published in the journal by:
 - 30 (i) the editor of the journal if the editor has expertise in the scientific or academic issue concerned; or
 - (ii) one or more persons with expertise in the scientific or academic issue concerned.

(2) If there is a defence to the publication of defamatory matter in a scientific or academic journal because of subsection (1), there is also a defence to the publication of any assessment of the matter in the same journal if the defendant proves that:

- 5 (a) the assessment was written by one or more of the persons who carried out the independent review of the matter; and
- (b) the assessment was written in the course of that review.

10 (3) It is a defence to the publication of defamatory matter if the defendant proves that the matter was contained in a fair summary of, or fair extract from, a matter or assessment for which there is a defence because of subsection (1) or (2).

15 (4) If a journal has more than one editor, a reference in this section to the editor of the journal is to be read as a reference to the editor or editors who were responsible for deciding to publish the matter concerned.

(5) A defence established under this section is defeated if, and only if, the plaintiff proves that the defamatory matter or assessment was not published honestly for the information of the public or the advancement of education.

20 **18 Section 28 amended (Defences of honest opinion)**

Section 28(5)

omit, insert

(5) For the purposes of this section, an opinion is based on proper material if:

- 25 (a) the material on which it is based is:
- (i) set out in specific or general terms in the published matter; or
 - (ii) notorious; or
 - 30 (iii) accessible from a reference, link or other access point included in the matter; or
 - (iv) otherwise apparent from the context in which the matter is published; and
- (b) the material:
- (i) is substantially true; or

- (ii) was published on an occasion of absolute or qualified privilege (whether under this Act or at general law); or
- (iii) was published on an occasion that attracted the protection of a defence under this section or section 25 or 26.

Example for subsection (5)(a)(iii)

A hyperlink on a webpage.

19 Section 30 repealed (Defence of triviality)

Section 30

repeal

20 Section 32 amended (Damages for non-economic loss limited)

(1) Section 32(1)

omit

Unless the court orders otherwise under subsection (2), the

insert

The

(2) Section 32(2)

omit, insert

(2) The maximum damages amount is to be awarded only in a most serious case.

(2A) Subsection (1) does not limit the court's power to award aggravated damages if an award of aggravated damages is warranted in the circumstances.

(2B) An award of aggravated damages is to be made separately to any award of damages for non-economic loss to which subsection (1) applies.

21 Section 41 amended (Giving of notices and other documents)

(1) After section 41(1)(a)(iii)

insert

- (iv) by sending it by email to an email address specified by the person for the giving or service of documents; or

(2) Section 41(1)(b)(ii)

omit

corporate.

insert

5 corporate; or

(3) After section 41(1)(b)(ii)

insert

10 (iii) by sending it by email to an email address specified by
the body corporate for the giving or service of
documents.

22 Part 7 inserted

After section 46

insert

15 **Part 7 Transitional matters for Defamation Legislation
Amendment Act 2025**

**Division 1 Part 2 of Defamation Legislation Amendment
Act 2025**

47 Application of amendments

20 An amendment made to this Act by Part 2 of the *Defamation
Legislation Amendment Act 2025* applies only in relation to the
publication of defamatory matter after the commencement of the
amendment.

Division 2 Limitation Act 1981

23 Act amended

25 This Division amends the *Limitation Act 1981*.

24 Sections 44AA and 44AAB inserted

Before section 44A, in Part III, Division 3

insert

44AA Extension of limitation period – concerns notice

5 (1) The 1-year limitation period referred to in section 12(2)(b) is taken to have been extended as provided by subsection (2) if a concerns notice is given to the proposed defendant on a day (the **notice day**) within the period of 56 days before the limitation period expires.

10 (2) The limitation period is extended for an additional period of 56 days minus any days remaining after the notice day until the 1-year limitation period expires.

Example for subsection (2)

15 *Assume a concerns notice is given 7 days before the limitation period expires. This means that there are 6 days left after the notice day before the period expires. Consequently, this subsection would operate to extend the limitation period by 56 days minus 6 days, that is, 50 days.*

(3) In this section:

concerns notice, see section 11A of the *Defamation Act 2006*.

20 **date of publication**, in relation to the publication of matter in electronic form, means the day on which the matter was first uploaded for access or sent electronically to a recipient.

44AAB Single publication rule

(1) This section applies if:

25 (a) a person (the **first publisher**) publishes matter to the public that is alleged to be defamatory (the **first publication**); and

(b) the first publisher or an associate of the first publisher subsequently publishes (whether or not to the public) matter that is substantially the same.

30 (2) Any cause of action for defamation against the first publisher or an associate of the first publisher in respect of the subsequent publication is to be treated as having accrued on the date of the first publication for the purposes of determining when:

(a) the limitation period applicable under section 12(2)(b) begins; or

35 (b) the 3-year period referred to in section 44A(2) begins.

(3) Subsection (2) does not apply in relation to the subsequent publication if the manner of that publication is materially different from the manner of the first publication.

5

(4) In determining whether the manner of a subsequent publication is materially different from the manner of the first publication, the considerations to which the court may have regard include (but are not limited to):

(a) the level of prominence that a matter is given; and

(b) the extent of the subsequent publication.

10

(5) This section does not limit the power of a court under section 44A to extend the limitation period applicable under section 12(2)(b).

(6) In this section:

associate of a first publisher means:

(a) an employee of the publisher; or

15

(b) a person publishing matter as a contractor of the publisher; or

(c) an associated entity (within the meaning of section 50AAA of the *Corporations Act 2001* (Cth)) of the publisher (or an employee or contractor of the associated entity).

20

date of first publication, in relation to the publication of matter in electronic form, means the day on which the matter was first uploaded for access or sent electronically to a recipient.

public includes a section of the public.

25 Section 44A amended (Extension of limitation period by court)

Section 44A(1) and (2)

25

omit, insert

(1) A person claiming to have a cause of action for defamation may apply to the court for an order extending the limitation period applicable under section 12(2)(b) for the cause of action.

30

(2) The court may extend the limitation period to a period of up to 3 years running from the date of the alleged publication of the matter if the plaintiff satisfies the court that it is just and reasonable to allow an action to proceed.

(2A) In determining whether to extend the limitation period, the court is to have regard to all of the circumstances of the case and in particular to:

(a) the length of, and the reasons for, the plaintiff's delay; and

5 (b) if a reason for the delay was that some or all of the facts relevant to the cause of action became known to the plaintiff after the limitation period expired:

(i) the day on which the facts became known to the plaintiff; and

10 (ii) the extent to which the plaintiff acted promptly and reasonably once the plaintiff knew whether or not the facts might be capable of giving rise to an action; and

15 (c) the extent, having regard to the delay, to which relevant evidence is likely to be unavailable or less cogent than if the action had been brought within the limitation period.

26 Section 44D inserted

After section 44C, in Part III, Division 3

insert

44D Effect of limitation law concerning electronic publications on other laws

20

(1) This section applies in respect of any requirement under section 12(2)(b) or 44AAB for the date of publication of a matter in electronic form to be determined by reference to the day on which the matter was first uploaded for access or sent electronically to a recipient.

25

(2) A requirement to which this section applies is relevant only for the purpose of determining when a limitation period begins and for no other purpose.

30

(3) Without limiting subsection (2), a requirement to which this section applies is not relevant for:

(a) establishing whether there is a cause of action for defamation; or

(b) the choice of law to be applied for a cause of action for defamation.

27 Section 52 amended (Application of Act to actions for defamation)

Section 52(1)

omit

12(1A)

insert

12(2)(b)

28 Part V, Division 3 inserted

After section 55

insert

Division 3 Transitional matters for Defamation Legislation Amendment Act 2025

56 Application of amendments

- (1) Section 44AA applies in relation to the publication of defamatory matter after the commencement of that section.
- (2) Section 44AAB applies in relation to the publication of defamatory matter after the commencement of that section, subject to subsection (3).
- (3) Section 44AAB extends to a first publication before the commencement of that section, but only in respect of subsequent publications after the commencement.
- (4) The amendment to section 44A by section 25 of the *Defamation Legislation Amendment Act 2025* applies in relation to the publication of defamatory matter after the commencement of the amendment.

Division 3 Local Court (Criminal Procedure) Act 1928

29 Act amended

This Division amends the *Local Court (Criminal Procedure) Act 1928*.

30 Section 131A amended (Certain assault and harm offences may be dealt with summarily)

Section 131A(1)

omit

or 189A(1) or (2)(a)

insert

, 189A(1) or (2)(a) or 204

Part 3 Further amendments to Defamation Act 2006

Division 1 Act amended

31 Act amended

This Part amends the *Defamation Act 2006*.

Division 2 Digital intermediaries amendments

32 Section 3 amended (Definitions)

Section 3

insert

access prevention step, in relation to the publication of digital matter, means a step:

(a) to remove the matter; or

(b) to block, disable or otherwise prevent access, whether by some or all persons, to the matter.

caching service, for Part 2, Division 2A, see section 9B.

conduit service, for Part 2, Division 2A, see section 9B.

digital intermediary, in relation to the publication of digital matter, means a person, other than an author, originator or poster of the matter, who provides or administers the online service by means of which the matter is published.

Note for definition digital intermediary

There may be more than one digital intermediary in relation to the publication of the same digital matter.

digital matter means matter published in electronic form by means of an online service.

online service means a service provided to a person, whether or not it is requested or it is for a fee or reward, to enable the person to use the internet, including, without limitation, a service enabling a person:

- (a) to access or connect to the internet; or
- (b) to use the internet to do one or more of the following:
 - (i) send or receive content;
 - (ii) store content;
 - (iii) index content;
 - (iv) search for content;
 - (v) share content;
 - (vi) interact with other persons.

*Examples for definition **online service***

- 1 *An internet-based social media platform.*
- 2 *A forum created or administered by a person using a facility provided by an internet-based social media platform that enables users to share content or interact with other users about a topic.*
- 3 *A website or other internet-based platform that enables knowledge to be shared by or with its users.*

poster, in relation to the publication of digital matter, means a person who uses the online service by means of which the matter is published for the purpose of communicating the matter to one or more other persons.

search engine, for Part 2, Division 2A, see section 9B.

search engine provider, for Part 2, Division 2A, see section 9B.

search result, for Part 2, Division 2A, see section 9B.

storage service, for Part 2, Division 2A, see section 9B.

33 Part 2, Division 2A inserted

After section 9A

insert

Division 2A Exemptions from liability for digital intermediaries

5 9B Definitions

In this Division:

10 *caching service* means an online service whose principal function is to provide automatic, intermediate and temporary storage of content for the purpose of making the onward electronic transmission of the content more efficient for its users.

*Example for definition **caching service***

A service for temporarily and automatically storing files that are most frequently downloaded by users of a website to speed up the download time for the files.

15 *conduit service* means an online service whose principal function is to enable its users to access or use networks or other infrastructure to connect to, or send or receive data by means of, the internet.

*Examples for definition **conduit service***

20 1 *A service provided by an internet service provider enabling its users to connect to the internet.*

2 *An internet-based service enabling its users to send emails or send text messages to other persons.*

search engine means a software application or system designed to enable its users to search for content on the internet.

25 *search engine provider*, for a search engine, means a person who maintains, or provides users with access to the search functions of, the search engine.

30 *search result* means a result generated by a search engine that is limited to identifying a webpage on which content is located by reference to one or more of the following:

- (a) the title of the webpage;
- (b) a hyperlink to the webpage;
- (c) an extract from the webpage;
- (d) an image from the webpage.

storage service means an online service, other than a caching service, whose principal function is to enable its users to store content remotely.

Example for definition storage service

5 *An internet-based cloud service enabling its users to store documents, videos or photographs for later retrieval.*

9C Exemption for digital intermediaries providing caching, conduit or storage services

10 (1) A digital intermediary is not liable for defamation for the publication of digital matter if the intermediary proves:

(a) the matter was published using one or more of the following services provided by the intermediary:

(i) a caching service;

(ii) a conduit service;

15 (iii) a storage service; and

(b) the intermediary's role in the publication was limited to providing one or more of the services mentioned in paragraph (a); and

(c) the intermediary did not do any of the following:

20 (i) initiate the steps required to publish the matter;

(ii) select any of the recipients of the matter;

(iii) encourage the poster of the matter to publish the matter;

(iv) edit the content of the matter, whether before or after it was published;

25 (v) promote the matter, whether before or after it was published.

(2) Subsection (1)(c) does not apply in relation to action taken because it is required by or under a law of an Australian jurisdiction or an order of an Australian court or Australian tribunal.

30 *Example for subsection (2)*

Action taken to comply with a code of conduct or other document regulating conduct that a digital intermediary is required to comply with by a law of an Australian jurisdiction.

- (3) Subsection (1) applies regardless of whether the digital intermediary knew, or ought reasonably to have known, the digital matter was defamatory.

9D Exemption for search engine providers

- 5 (1) A search engine provider for a search engine is not liable for defamation for:

(a) the publication of digital matter comprised of search results if the provider's role was limited to providing an automated process for the user of the search engine to generate the results; or
10

(b) the publication of digital matter to which the search results provide a hyperlink if the provider's role in the publication of the matter is limited to the role mentioned in paragraph (a).

15 (2) Subsection (1) does not apply in relation to search results, or to digital matter to which the search results provide hyperlinks, to the extent the results are promoted or prioritised by the search engine provider because of a payment or other benefit given to the provider by or on behalf of a third party.

20 (3) Subsection (1) applies regardless of whether the search engine provider knew, or ought reasonably to have known, the digital matter was defamatory.

9E Early determination of digital intermediary exemptions

- (1) The judicial officer in defamation proceedings:

25 (a) is to determine whether a defendant has a digital intermediary exemption; and

(b) is to determine whether a digital intermediary exemption is established as soon as practicable before the trial for the proceedings commences unless satisfied that there are good reasons to postpone the determination to a later stage of the proceedings; and
30

(c) may make any orders the judicial officer considers appropriate concerning the determination of the issue, including dismissing the proceedings if satisfied the digital intermediary exemption is established.

(2) Without limiting subsection (1):

(a) the following matters are relevant in deciding whether there are good reasons to postpone the determination of whether a digital intermediary exemption is established to a later stage of the proceedings:

(i) the cost implications for the parties;

(ii) the resources available to the court at the time;

(iii) the extent to which technical or scientific issues are raised in the proceedings;

(iv) the extent to which establishing the digital intermediary exemption is linked to other issues for determination during the trial for the proceedings; and

(b) the judicial officer may determine a digital intermediary exemption is established on the pleadings without the need for further evidence if satisfied that the pleaded particulars are sufficient to establish the exemption.

(3) Nothing in this section limits the powers that a judicial officer may have apart from this section to dismiss defamation proceedings, whether before or after the trial for the proceedings commences.

(4) In this section:

digital intermediary exemption means an exemption from liability for defamation mentioned in section 9C or 9D.

34 Section 14 amended (Content of offer to make amends)

(1) Section 14(1A)(b)

omit, insert

(b) if the matter is digital matter – an offer to take access prevention steps in relation to the matter; or

(2) After section 14(1A)

insert

(1B) If the matter in question is digital matter, an offer to take access prevention steps may be made instead of, or in addition to, either or both of the offers mentioned in subsection (1)(d) and (e).

35 Section 20A inserted

After section 20, in Part 4, Division 1

insert

20A Orders for preliminary discovery about posters of digital matter

(1) This section applies if the court procedure law for a court allows a person seeking to bring defamation proceedings for the publication of digital matter to obtain an order for, or in the nature of, preliminary discovery for either or both of the following purposes:

- (a) to obtain information to assist in identifying the posters of the matter;
- (b) to obtain information to assist in locating physical or digital addresses for the posters of the matter to allow concerns notices to be given to them or defamation proceedings against them to be commenced.

(2) Despite anything to the contrary in the court procedure law for a court, the court must take the following matters into account before making an order mentioned in subsection (1):

- (a) the objects of this Act;
- (b) privacy, safety or other public interest considerations that may arise if the order is made.

Example for subsection 2(b)

Evidence suggesting the poster of digital matter is in fear of domestic violence from the person seeking an order to obtain the poster's address.

(3) This section does not limit the matters the court may take into account before making an order mentioned in subsection (1).

(4) In this section:

court procedure law, for a court, means:

- (a) rules of court for the court; or
- (b) an Act or other legislation that regulates the practice or procedure of the court; or
- (c) the general law concerning the inherent or implied jurisdiction or powers of the court.

36 Section 28A inserted

After section 28

insert

28A Defence for publications involving digital intermediaries

5 (1) It is a defence to the publication of defamatory digital matter if the defendant proves:

(a) the defendant was a digital intermediary in relation to the publication; and

10 (b) the defendant had, at the time of the publication, an accessible complaints mechanism for the plaintiff to use; and

15 (c) if the plaintiff gave the defendant a written complaint under this section about the publication – reasonable access prevention steps, if steps were available, were taken in relation to the publication, whether before the complaint was given or within 7 days after the complaint was given.

Notes for subsection (1)

20 1 The defendant is not required to prove paragraph (c) to establish the defence if the plaintiff has not given the defendant a complaint about the publication under this section. Subsection (3) sets out requirements for giving complaints.

2 Subsection (6) defines **accessible complaints mechanism**.

(2) For subsection (1)(c), reasonable access prevention steps were taken in relation to the publication of digital matter if:

25 (a) for access prevention steps taken by the defendant – the steps taken were reasonable for the defendant to take in the circumstances; or

(b) for access prevention steps taken by another person – it was reasonable for the defendant not to take steps because of the steps already taken.

30 (3) A written complaint is given under this section about the publication of defamatory digital matter if:

(a) the complaint contained information sufficient to enable a reasonable person in the defendant's circumstances to be made aware of the following:

35 (i) the name of the plaintiff;

- (ii) the matter and where it could be located;
- (iii) that the plaintiff considered the matter to be defamatory;
and

(b) the complaint was given using an accessible complaints mechanism for the plaintiff to use or given to the defendant in another way permitted by section 41.

(4) A defence under this section is defeated only if the plaintiff proves the defendant was actuated by malice in establishing or providing the online service by means of which the digital matter was published.

(5) A defendant who would otherwise be a digital intermediary in relation to the publication of digital matter does not cease to be a digital intermediary for this section merely because the defendant took steps to detect or identify, or steps to remove, block, disable or otherwise prevent access by persons to, the following:

(a) defamatory or other unlawful content published, or sought to be published, by a person using the online service provided by the defendant;

(b) other content published, or sought to be published, by a person using the online service provided by the defendant that was incompatible with the terms or conditions under which the service was provided.

Note for subsection (5)

*This subsection allows a defendant to rely on the defence, despite the definition of **digital intermediary** in section 3 excluding authors, originators or posters of digital matter, if the defendant's editorial or moderating role over content published using the online service was limited to the steps mentioned in this subsection.*

(6) In this section:

accessible complaints mechanism, for a plaintiff to use, means an easily accessible address, location or other mechanism available for the plaintiff to use to complain to the defendant about the publication of the digital matter concerned.

*Examples for definition **accessible complaints mechanism***

- 1 An email address or direct messaging address to which a complaint may be sent.
- 2 A webpage, or a part of a webpage, enabling details about a complaint to be uploaded or inputted.

37 Section 36A inserted

After section 36, in Part 4, Division 3

insert

36A Orders against non-party digital intermediaries concerning defamatory digital matter

(1) This section applies in relation to defamation proceedings for the publication of digital matter if:

(a) the plaintiff has obtained judgment for defamation against the defendant in the proceedings; or

(b) a court has granted a temporary injunction or makes another temporary order preventing the defendant from continuing to publish, or from republishing, the matter pending the determination of the proceedings; or

(c) a court has granted a final injunction or makes another final order preventing the defendant from continuing to publish, or from republishing, the matter.

(2) In defamation proceedings to which this section applies, the court may order a digital intermediary who is not a party to the proceedings (a ***non-party digital intermediary***) to take access prevention steps or other steps the court considers necessary in the circumstances:

(a) to prevent or limit the continued publication or republication of the matter; or

(b) to comply with, or otherwise give effect to, the judgment, injunction or other order mentioned in subsection (1).

(3) Without limiting subsection (2), an order under this section may:

(a) require one or more steps to be taken; or

(b) require a step to be taken in relation to all, or only some, of the users of an online service.

(4) The court may not make an order under this section against a non-party digital intermediary unless the intermediary has been given an opportunity to be heard about whether it is appropriate for the order to be made.

(5) Despite subsection (4), the court may make a temporary order without giving the non-party digital intermediary an opportunity to be

heard about whether it is appropriate to make the order if the court considers it necessary in the circumstances for the order to be made expeditiously pending a subsequent hearing concerning whether a further temporary order or a final order should be made.

5 (6) An order may be made under this section even if the non-party digital intermediary is not, or may not be, liable for defamation, including because of a defence, for the publication of the digital matter to which the defamation proceedings relate.

10 (7) This section does not limit other powers the court may have apart from this section to grant injunctions or make other orders requiring a non-party digital intermediary to take access prevention steps or other steps.

38 Section 41 amended (Giving of notices and other documents)

(1) Section 41(1)(a)(iv)

15 *omit, insert*

(iv) sending it by email, messaging or other electronic communication to an electronic address or location indicated by the person for giving documents to, or serving documents on, the person; or

20 (2) Section 41(1)(b)(iii)

omit, insert

(iii) sending it by email, messaging or other electronic communication to an electronic address or location indicated by the body corporate for giving documents to, or serving documents on, the body corporate.

25

(3) After section 41(1)

insert

Examples for subsection (1)(a)(iv) and (b)(iii)

30

1 An email address or direct messaging address set out on an internet-based social media forum for contacting the administrator of the forum about content on the forum.

2 An email address or direct messaging address provided by the poster of digital matter on an internet-based social media forum for contacting the poster about the content of the matter.

35

3 A form on a website provided by a digital intermediary enabling a user to contact the intermediary by filling in the form or uploading documents.

(4) Section 41(2), after "be"

insert

given to or

39 Part 7, Division 2 inserted

5 After section 47

insert

Division 2 Part 3, Division 2 of Defamation Legislation Amendment Act 2025

48 Interpretation

10 (1) In this Division:

amending Act means the *Defamation Legislation Amendment Act 2025*.

commencement means the commencement of Part 3, Division 2 of the amending Act.

15 ***post-commencement action*** means a cause of action for the publication of defamatory matter accruing after the commencement.

pre-commencement action means a cause of action for the publication of defamatory matter accruing before the commencement.

20 (2) In this Division, a reference to an amendment of this Act or to the commencement of a provision of this Act includes a reference to any definition inserted by section 32 of the amending Act used in the relevant amendment or provision.

49 Application of digital intermediary amendments

25 Part 2, Division 2A and section 29A do not apply to a post-commencement action if:

(a) the post-commencement action is one of 2 or more causes of action in a proceeding commenced by a plaintiff; and

30 (b) each cause of action in the proceeding accrues because of the publication of the same, or substantially the same, matter on separate occasions, whether by the same defendant or another defendant; and

- (c) one or more of the other causes of action in the proceeding are pre-commencement actions; and
- (d) the post-commencement action accrued no later than 12 months after the date on which the earliest pre-commencement action in the proceeding accrued.

50 Application of offers amendments

The amendments to section 14 by the amending Act apply to any offer to make amends made after the commencement, including an offer to make amends that relates to a publication before the commencement.

51 Application of preliminary discovery or non-party digital intermediary order amendments

- (1) Sections 20A and 36A apply to the making of an order after the commencement, including if the proceeding in which the order is made:
- (a) involves a pre-commencement action; or
- (b) was commenced before the commencement.
- (2) Sections 20A and 36A do not apply to the variation or revocation of an order that was made before the commencement.

52 Application of document giving or service amendments

The amendments to section 41 by the amending Act apply to the giving or service of notices or other documents after the commencement even if the notices or other documents relate:

- (a) to a pre-commencement action; or
- (b) to a proceeding commenced before the commencement.

Division 3 Absolute privilege amendments

40 Section 24 amended (Defence of absolute privilege)

- (1) After section 24(2)(b)

insert

- (ba) the matter is published to a person who, at the time of the publication, is an official of a police force or service of an Australian jurisdiction and it is published to the official while the official is acting in an official capacity; or

(2) After section 24(2)

insert

(3) In this section:

official, of a police force or service of an Australian jurisdiction means:

- (a) an officer, employee or member of staff of the police force or service; or
- (b) another person engaged to act for or on behalf of the police force or service.

41 Part 7, Division 3 inserted

After section 52

insert

Division 3 Part 3, Division 3 of Defamation Legislation Amendment Act 2025

56 Application of absolute privilege amendments

(1) Section 24, as in force immediately before the commencement of the amending Division, continues to apply in respect of a pre-commencement action despite the amendments to that section by the amending Division.

(2) In this section:

amending Division means Part 3, Division 3 of the *Defamation Legislation Amendment Act 2025*.

pre-commencement action, in relation to the amending Division, means a cause of action for the publication of defamatory matter accruing before the commencement of the amending Division.

Part 4 Repeal of Act

42 Repeal of Act

This Act is repealed on the day after it commences.