

Defamation (Model Provisions) and Other Legislation Amendment Bill 2021



Queensland

Defamation (Model Provisions) and Other Legislation Amendment Bill 2021

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2021

A Bill

for

An Act to amend the *Defamation Act 2005*, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* and the *Limitation of Actions Act 1974* for particular purposes

[s 1]

	The P	arlia	iment of Queen	sland enacts—	1
	Part	1	Pre	eliminary	2
Clause	1	She	•	e cited as the <i>Defamation (Model Provisions)</i> lation Amendment Act 2021.	3 4 5
Clause	2	Co	mmencement This Act, other t	han part 3, commences on 1 July 2021.	6 7
	Part	2	Am 200	nendment of Defamation Act	8
Clause	3	Act	t amended This part amends	s the <i>Defamation Act 2005</i> .	10 11
Clause	4		nendment of s 9 use of action for Section 9(2)(b)— omit, insert— (b)	•	12 13 14 15 16 17
		(2)	Section 9(4)— omit. Section 9(6)— insert—		18 19 20 21

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			-	
			employee, in relation to a corporation, includes any individual (whether or not an independent contractor) who is—(a) engaged in the day to day operations of the	1 2 3 4
			corporation other than as a volunteer; and	5
			(b) subject to the control and direction of the corporation.	6 7
Clause	5		f s 10 (No cause of action for defamation of, ceased persons)	8 9
		Section 10-	_	10
		insert—		11
		(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 the subsection.	12 13 14 15 16
Clause	6	Insertion of ne	ew s 10A	17
		After section	on 10—	18
		insert—		19
			ious harm element of cause of action for amation	20 21
		(1)	It is an element (the <i>serious harm element</i>) 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.	22 23 24 25 26
		(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.	27 28 29 30
		(3)	The judicial officer (and not the jury) in	31

	defamation proceedings is to determine whether the serious harm element is established.	1 2
(4)	Without limiting subsection (3), the judicial officer may (whether on the application of a party or on the judicial officer's own motion)—	3 4 5
	(a) determine whether the serious harm element is established at any time before the trial for the proceedings commences or during the trial; and	6 7 8 9
	(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).	10 11 12 13 14
(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).	15 16 17 18 19 20 21 22
(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—	23 24 25 26
	(a) the cost implications for the parties;	27
	(b) the resources available to the court at the time;	28 29
	(c) the extent to which establishing the serious harm element is linked to other issues for determination during the trial for the proceedings.	30 31 32 33
(7)	Without limiting subsection (5), the judicial officer may determine the serious harm element is not established on the pleadings without the need	34 35 36

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			part		er evidence if satisfied that the pleaded es are insufficient to establish the	1 2 3
		(8)	judi to	cial o dismi	in this section limits the powers that a officer may have apart from this section ss defamation proceedings (whether after the trial commences).	4 5 6 7
Clause	7	Replacement of	of pt	3, di	v 1, hdg (Offers to make amends)	8
		Part 3, divis	sion 1	l, hea	ding—	9
		omit, insert				10
		Divisio	n 1		Concerns notices and	11
					offers to make amends	12
Clause	8	Insertion of ne	ew s	s 12A	and 12B	13
		After section	on 12-			14
		insert—				15
		12A Coi	ncer	ns no	otices	16
		(1)		the pu ce if-	urpose of this Act, a notice is a <i>concerns</i>	17 18
			(a)	the r	notice—	19
				(i)	is in writing; and	20
				(ii)	specifies the location where the matter in question can be accessed (for example, a webpage address); and	21 22 23
				(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	24 25 26 27 28
				(iv)	informs the publisher of the harm that the person considers to be serious harm	29 30

	to the person's reputation caused, or likely to be caused, by the publication of the matter in question; and
	(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.
	Note—
	Section 12B requires a concerns notice to be given before proceedings for defamation can be commenced.
(2)	For the avoidance of doubt, a document that is required to be filed or lodged to commence defamation proceedings can not be used as a concerns notice.
(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 <i>further particulars notice</i>) requesting that the aggrieved person provide reasonable further particulars as specified in the further particulars notice about the information concerned.
(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.
(5)	An aggrieved person who fails to provide the reasonable further particulars specified in a further particulars notice within the applicable

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	period is taken not to have given the publisher a concerns notice for the purposes of this section.	1 2
	famation proceedings can not be mmenced without concerns notice	3 4
(1)	An aggrieved person can not commence defamation proceedings unless—	5 6
	(a) the person has given the proposed defendant a concerns notice in respect of the matter concerned; and	7 8 9
	(b) the imputations to be relied on by the person in the proposed proceedings were particularised in the concerns notice; and	10 11 12
	(c) the applicable period for an offer to make amends has elapsed.	13 14
(2)	Subsection (1)(b) does not prevent reliance on—	15
	(a) some, but not all, of the imputations particularised in a concerns notice; or	16 17
	(b) imputations that are substantially the same as those particularised in a concerns notice.	18 19
(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 21 22 23
	(a) the commencement of proceedings after the end of the applicable period for an offer to make amends contravenes the limitation law; or	24 25 26 27
	(b) it is just and reasonable to grant leave.	28
(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	29 30 31 32 33

[s 9]

	ceased to have power to extend the limitation period.	1 2
	(5) In this section—	3
	limitation law means the Limitation of Actions Act 1974.	4 5
Clause 9	Amendment of s 14 (When offer to make amends may be made)	6 7
	(1) Section 14(1)(a)—	8
	omit, insert—	9
	(a) the applicable period for an offer to make amends has expired; or	10 11
	(2) Section 14(2) to (5)—	12
	omit, insert—	13
	(2) For the purposes of this Act, the <i>applicable period</i> for an offer to make amends is—	14 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	16 17 18 19 20 21 22
	(b) in any other case—28 days since the publisher was given a concerns notice by the aggrieved person.	23 24 25
	(3) If a publisher gives more than 1 further particulars notice, subsection (2)(a) applies only in respect of the first notice.	26 27 28
Clause 10	Amendment of s 15 (Content of offer to make amends) (1) Section 15(1)—	29 30

	insert—			1
		(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	2 3 4
(2)	Section 15(1)(d)	, after 'reasonable correction of'—	5
	insert—			6
		, or abou	a clarification of or additional information ut,	7 8
(3)	Section 15(1)(g)	<u> </u>	9
	omit.			10
(4)	Section 15-	_		11
	insert—			12
	(1A)	(1), othe action	ddition to the matters referred to in subsection an offer to make amends may include any er kind of offer, or particulars of any other on taken by the publisher, to redress the harm ained by the aggrieved person because of the ter in question, including (but not limited —	13 14 15 16 17 18 19
		(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	20 21 22 23 24
		(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	25 26 27 28
		(c)	an offer to pay compensation for any economic or non-economic loss of the aggrieved person; or	29 30 31
		(d)	the particulars of any correction or apology made, or action taken, before the date of the offer	32 33 34

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		(5) Section 15(2), 'subsection (1)(g)(ii)'—	1
		omit, insert—	2
		subsection (1A)(c)	3
Clause	11	Amendment of s 18 (Effect of failure to accept re offer to make amends)	easonable 4 5
		(1) Section 18(1)(a)—	6
		omit, insert—	7
		(a) the publisher made the offer reasonably practicable after the was given a concerns notice in rematter (and, in any event, applicable period for an offer amends); and	e publisher 9 spect of the 10 within the 11
		(2) Section 18(1)(b), 'at any time before the trial'—	14
		omit.	15
		(3) Section 18—	16
		insert—	17
		(3) Despite section 22(2), the judicial office the jury) in defamation proceedings to is to determine whether a defence section is established.	ried by jury 19
Clause	12	Amendment of s 21 (Election for defamation pro to be tried by jury)	ceedings 22 23
		(1) Section 21—	24
		insert—	25
		(1A) Without limiting subsection (1), a cour that defamation proceedings are not to jury if—	•
		(a) the trial requires a prolonged exa records; or	mination of 29 30

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			(b) the trial involves any technical, scientific or other issue that can not be conveniently considered and resolved by a jury.	1 2 3
		(2) Section 21	(3)—	4
		omit, inser	<i>t</i> —	5
		(3)	An election may be revoked only—	6
			(a) with the consent of all the parties to the proceedings; or	7 8
			(b) if all the parties do not consent—with the leave of the court.	9 10
		(3A)	The court may, on the application of a party to the proceedings, grant leave for the purposes of subsection (3)(b) only if satisfied it is in the interests of justice for the election to be revoked.	11 12 13 14
		(3) Section 21	(3A) and (4)—	15
		renumber	as section 21(4) and (5).	16
Clause 13			of s 22 (Roles of judicial officers and juries proceedings)	17 18
		Section 22	(5)—	19
		insert—		20
			(c) requires or permits a jury to determine any issue that another provision of this Act requires a judicial officer to determine.	21 22 23
Clause	14		of s 23 (Leave required for further in relation to publication of same natter)	24 25 26
		Section 23	_	27
		omit, inser	<i>t</i> —	28

re	Leave required for multiple proceedings in relation to publication of same defamatory matter					
(1	This section applies to a person who has brought defamation proceedings for damages, whether in this jurisdiction or elsewhere, against a person (a <i>previous defendant</i>) in relation to the publication of a matter.	4 5 6 7 8				
(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.	9 10 11 12 13 14 15				
(3	A person is an <i>associate of a previous defendant</i> if, at the time of the publication to which the previous defamation proceedings related, the person was—	16 17 18 19				
	(a) an employee of the defendant; or	20				
	(b) a person publishing matter as a contractor of the defendant; or	21 22				
	(c) an associated entity of the defendant (or an employee or contractor of the associated entity).	23 24 25				
Replacemen	nt of s 26 (Defence of contextual truth)	26				
Section 2	6—	27				
omit, inse	ert—	28				
26 D	efence of contextual truth	29				
(1) It is a defence to the publication of defamatory matter if the defendant proves that—	30 31				

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	(a)	the matter carried 1 or more imputations that are substantially true (<i>contextual imputations</i>); and	1 2 3
	(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.	4 5 6 7 8 9
(defe incl	e contextual imputations on which the endant may rely to establish the defence ude imputations of which the plaintiff aplains.	10 11 12 13
16 Insertion of	new s	29A	14
After se	ction 29	_	15
insert—			16
		e of publication of matter concerning f public interest	17 18
(s a defence to the publication of defamatory ter if the defendant proves that—	19 20
	(a)	the matter concerns an issue of public interest; and	21 22
	(b)	the defendant reasonably believed that the publication of the matter was in the public interest.	23 24 25
(a c	etermining whether the defence is established, court must take into account all of the umstances of the case.	26 27 28
(take exte	hout limiting subsection (2), the court may e into account the following factors to the ent the court considers them applicable in the umstances—	29 30 31 32

	(a)	the seriousness of any defamatory imputation carried by the matter published;	1 2
	(b)	the extent to which the matter published distinguishes between suspicions, allegations and proven facts;	3 4 5
	(c)	the extent to which the matter published relates to the performance of the public functions or activities of the person;	6 7 8
	(d)	whether it was in the public interest in the circumstances for the matter to be published expeditiously;	9 10 11
	(e)	the sources of the information in the matter published, including the integrity of the sources;	12 13 14
	(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 (including, for example, to comply with an applicable professional code or standard);	15 16 17 18 19 20 21
	(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;	22 23 24 25 26
	(h)	any other steps taken to verify the information in the matter published;	27 28
	(i)	the importance of freedom of expression in the discussion of issues of public interest.	29 30
(4)	Sub	section (3) does not—	31
	(a)	require each factor referred to in the subsection to be taken into account; or	32 33
	(b)	limit the matters that the court may take into account.	34 35

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			(5)	othe office to d	hout affecting the application of section 22 to er defences, the jury (and not the judicial cer) in defamation proceedings tried by jury is etermine whether a defence under this section stablished.	1 2 3 4 5
Clause	17				0 (Defence of qualified privilege for n information)	6 7
		(1)	Section 30(3)—		8
			omit, insert	_		9
			(3)	whe pub the the	ettermining for the purposes of subsection (1) ether the conduct of the defendant in lishing matter about a person is reasonable in circumstances, a court may take into account following factors to the extent the court siders them applicable in the circumstances—	10 11 12 13 14 15
				(a)	the seriousness of any defamatory imputation carried by the matter published;	16 17
				(b)	the extent to which the matter published distinguishes between suspicions, allegations and proven facts;	18 19 20
				(c)	the nature of the business environment in which the defendant operates;	21 22
				(d)	whether it was appropriate in the circumstances for the matter to be published expeditiously;	23 24 25
				(e)	any other steps taken to verify the information in the matter published.	26 27
			(3A)	Sub	section (3) does not—	28
				(a)	require each factor referred to in the subsection to be taken into account; or	29 30
				(b)	limit the matters that the court may take into account.	31 32
			(3B)	It i	s not necessary to prove that the matter	33

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			esta	blish	concerned an issue of public interest to the defence of qualified privilege under n (1).	1 2 3
	(2)	Section 30-				4
		insert—				5
		(6)	othe offic to d	er det cer) in	affecting the application of section 22 to fences, the jury (and not the judicial a defamation proceedings tried by jury is ine whether a defence under this section shed.	6 7 8 9 10
Clause 18	Ins	ertion of ne	ew s	30A		11
		After section	on 30-			12
		insert—				13
		30A Def	fence	e of s	cientific or academic peer review	14
		(1)			fence to the publication of defamatory the defendant proves that—	15 16
			(a)	acad	matter was published in a scientific or lemic journal (whether published in tronic form or otherwise); and	17 18 19
			(b)		matter relates to a scientific or academic e; and	20 21
			(c)	sciei befo	independent review of the matter's ntific or academic merit was carried out re the matter was published in the nal by—	22 23 24 25
				(i)	the editor of the journal if the editor has expertise in the scientific or academic issue concerned; or	26 27 28
				(ii)	1 or more persons with expertise in the scientific or academic issue concerned.	29 30
		(2)			is a defence to the publication of ry matter in a scientific or academic	31 32

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	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—	1 2 3 4
	(a) the assessment was written by 1 or more of the persons who carried out the independent review of the matter; and	5 6 7
	(b) the assessment was written in the course of that review.	8 9
(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).	10 11 12 13 14
(4)	If a journal has more than 1 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.	15 16 17 18 19
(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 21 22 23 24
Amendment o	f s 31 (Defences of honest opinion)	25
Section 31(26
omit, insert-		27
(5)	For the purposes of this section, an opinion is based on proper material if—	28 29
	(a) the material on which it is based is—	30
	(i) set out in specific or general terms in the published matter; or	31 32
	(ii) notorious; or	33
	(ii) notorious; or	3

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					(iii)	accessible from a reference, link or other access point included in the matter (for example, a hyperlink on a webpage); or	1 2 3 4
					(iv)	otherwise apparent from the context in which the matter is published; and	5 6
				(b)	the 1	material—	7
					(i)	is substantially true; or	8
					(ii)	was published on an occasion of absolute or qualified privilege (whether under this Act or at general law); or	9 10 11
					(iii)	was published on an occasion that attracted the protection of a defence under this section or section 28 or 29.	12 13 14
lause	20	Om	ission of s	33 ([Defe	nce of triviality)	15
			Section 33-				16
			omit.				17
lause	21		endment o ited)	of s 35	5 (Da	amages for non-economic loss	18 19
		(1)	Section 35((1), fro	om 'U	Unless' to 'maximum amount'—	20
			omit, insert	t—			21
				The	maxi	imum amount	22
		(2)	Section 35((2)—			23
			omit, insert	t—			24
			(2)			imum damages amount is to be awarded most serious case.	25 26
			(2A)	awar aggr	rd a avate	on (1) does not limit the court's power to ggravated damages if an award of ed damages is warranted in the ances.	27 28 29 30

		[0.22]	
		(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.	1 2 3 4
Clause	22	Amendment of s 44 (Giving of notices and other documents)	5
		(1) Section 44(1)(a)—	7
		insert—	8
		(iv) by sending it by email to an email address specified by the person for the giving or service of documents; or	9 10 11
		(2) Section 44(1)(b)—	12
		insert—	13
		(iii) by sending it by email to an email address specified by the body corporate for the giving or service of documents.	14 15 16
Clause	23	Amendment of s 49 (Savings, transitional and other provisions)	17 18
		Section 49, heading, after 'provisions'—	19
		insert—	20
		for Act No. 55 of 2005	21
Clause	24	Insertion of new s 50	22
		After section 49—	23
		insert—	24
		50 Transitional provision for Defamation (Model Provisions) and Other Legislation Amendment Act 2021	25 26 27
		An amendment made to this Act by the Defamation (Model Provisions) and Other	28 29

Defamation (Model Provisions) and Other Legislation Amendment Bill 2021
Part 3 Amendment of Heavy Vehicle National Law and Other Legislation Amendment Act 2019

[s	25]
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		Legislation Amendment Act 2021 applies only in relation to the publication of defamatory matter
		after the commencement of the amendment.
se	25	Amendment of sch 5 (Dictionary)
		Schedule 5—
		insert—
		applicable period, for an offer to make amends, see section 14(2).
		associated entity has the meaning given in the Corporations Act, section 50AAA.
		concerns notice see section 12A(1).
		excluded corporation has the meaning given in section 9(2).
		further particulars notice see section 12A(3).
	Part	3 Amendment of Heavy Vehicle
		National Law and Other
		Legislation Amendment Act
		2019
ıse	26	Act amended
		This part amends the Heavy Vehicle National Law and Other Legislation Amendment Act 2019.
ıse	27	Omission of ss 10 and 11
		Sections 10 and 11—
		omit.

[s 28]

	Part	t 4		Amendment of Limitation of Actions Act 1974	1 2
Clause	28	Act	t amended		3
			This part ar	mends the Limitation of Actions Act 1974.	4
Clause	29	Am	nendment o	f s 10AA (Defamation actions)	5
		(1)	Section 10A	AA, '1 year'—	6
			omit, insert	<u> </u>	7
				a limitation period of 1 year running	8
		(2)	Section 10A	AA—	9
			insert—		10
			(2)	The 1-year limitation period referred to in subsection (1) is taken to have been extended as provided by subsection (3) if a concerns notice is given to the proposed defendant on a day (the <i>notice day</i>) within the period of 56 days before the limitation period expires.	11 12 13 14 15 16
			(3)	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.	17 18 19 20
				Example—	21
				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 minus 6 days, that is, 50 days.	22 23 24 25 26 27
			(4)	In this section—	28
				concerns notice see the Defamation Act 2005, section 12A(1).	29 30
				date of the publication, in relation to the	31

s	30]
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		the day on which the matter was first uploaded for access or sent electronically to a recipient.	1 2 3
clause 30	Insertion of ne	ew s 10AB	4
	After section	n 10AA—	5
	insert—		6
	10AB D	efamation actions—single publication rule	7
	(1)	This section applies if—	8
		(a) a person (the <i>first publisher</i>) publishes matter to the public that is alleged to be defamatory (the <i>first publication</i>); and	9 10 11
		(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.	12 13 14 15
	(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 taken to have accrued on the date of the first publication for the purposes of determining when—	16 17 18 19 20
		(a) the limitation period applicable under section 10AA begins; or	21 22
		(b) the 3-year period referred to in section 32A(2) begins.	23 24
	(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.	25 26 27 28
	(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)—	29 30 31 32 33

	. 1	
	(a) the level of prominence that a matter is given; and	1 2
	(b) the extent of the subsequent publication.	3
(5)	This section does not limit the power of a court under section 32A to extend the limitation period applicable under section 10AA.	4 5 6
(6)	In this section—	7
	associate, of a first publisher, means—	8
	(a) an employee of the publisher; or	9
	(b) a person publishing matter as a contractor of the publisher; or	1 1
	(c) an associated entity, within the meaning of the Corporations Act, section 50AAA, of the publisher (or an employee or contractor of the associated entity).	1 1 1 1
	date of the 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.	1 1 1 1
	public includes a section of the public.	2
Amandmanta	of a 224 (Defensation actions)	2
	of s 32A (Defamation actions) A(2) and (3)—	2
omit, insert		2
•		2
(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.	2 2 2 2 2 2
(3)	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—	2 3 3

s 32

			1 2	
	o 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	•	7 8	
	(i	, <u> </u>	9 10 11 12 13	
	w u h	the extent, having regard to the delay, to which relevant evidence is likely to be inavailable or less cogent than if the action had been brought within the limitation period.	14 15 16 17 18	
ertion of ne	w s 41	IA	19	
After section	n 41—		20	
insert—			21	
	cernin	ng electronic publications on other	22 23 24	
(1)	under public determ matter	section 10AA or 10AB for the date of eation of a matter in electronic form to be nined by reference to the day on which the was first uploaded for access or sent	25 26 27 28 29 30	
(2)	releva	nt only for the purpose of determining when itation period begins and for no other	31 32 33 34	

Insertion of

(3)	Without limiting subsection (2), a requirement to which this section applies is not relevant for—	1 2
	(a) establishing whether there is a cause of action for defamation; or	3 4
	(b) the choice of law to be applied for a cause of action for defamation.	5 6
Insertion of ne	ew s 50	7
After section	n 49—	8
insert—		9
Pro	nsitional provision for Defamation (Model visions) and Other Legislation Amendment 2021	10 11 12
(1)	The amendment made to section 10AA by the Defamation (Model Provisions) and Other Legislation Amendment Act 2021 applies in relation to the publication of defamatory matter after the commencement of the amendment.	13 14 15 16 17
(2)	Section 10AB, as inserted by the <i>Defamation</i> (<i>Model Provisions</i>) and <i>Other Legislation Amendment Act 2021</i> , applies in relation to the publication of defamatory matter after the commencement of the section, subject to subsection (3).	18 19 20 21 22 23
(3)	Section 10AB extends to a first publication before the commencement of the section, but only in respect of subsequent publications after the commencement.	24 25 26 27
(4)	Section 32A, as amended by the <i>Defamation</i> (<i>Model Provisions</i>) and <i>Other Legislation Amendment Act 2021</i> , applies in relation to the publication of defamatory matter after the commencement of the section.	28 29 30 31 32

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