



Mark Speakman
Attorney General
Minister for the Prevention of Domestic Violence

MEDIA RELEASE

Monday, 27 July 2020

NATION AGREES TO NSW-LED DEFAMATION REVOLUTION

Outdated defamation laws that result in crippling damages payouts, chill public interest journalism and clog courts with minor claims will be overhauled after Attorneys-General from across Australia agreed today to implement NSW-led reforms.

Attorney General Mark Speakman said today's meeting of the Council of Attorneys-General (CAG) marked a turning point in defamation law in Australia.

"Australia's defamation laws were enacted before social media and online news coverage," Mr Speakman said.

"Social media has resulted in an explosion of minor cases over minor personal slights, clogging courts with costly litigation out of all proportion to the actual complaint.

"These reforms will bring defamation laws into the modern era, improving the balance between protecting reputations and free speech."

The amendments follow wide-ranging consultations with peak legal bodies, media companies, academics, digital platforms and lawyers who represent both plaintiffs and defendants.

"I'm very grateful for the input of all these interested groups and individuals and for the work of the CAG's Defamation Working Party, which worked to an ambitious timetable to deliver these historic changes," Mr Speakman said.

The reforms include:

- Reducing the likelihood of massive payouts by clarifying the cap on damages for non-economic loss;
- Protecting responsible journalism with a new public interest defence based on the UK approach;
- A serious harm threshold to help unclog our courts from minor claims, requiring plaintiffs to prove actual or likely serious harm to their reputation from the publication;
- A single publication rule so that the limitation period for online publications runs from the date the material is first uploaded, rather than each time it is downloaded;

- Keeping more matters out of court by requiring plaintiffs to issue a concerns notice; and
- A new defence for peer reviewed matters published in scientific and academic journals.

“Once enacted by Australia’s parliaments, these reforms will represent a generational change in the way reputations are protected while supporting the role of the media to subject the powerful to responsible scrutiny, but there is still more work to be done,” Mr Speakman said.

A second stage reform process, also led by NSW, will examine the responsibilities and liability of digital platforms for defamatory material published online.

The CAG also agreed today to start a NSW-led reform process to design a national scheme to provide authorised persons with access to the digital footprints left by people who pass away or do not have decision-making capacity.

These records can range from online bank accounts to social media profiles.

The national Working Party will take into account the NSW Law Reform Commission [report](#) *Access to digital records upon death or incapacity* and will make a progress report to CAG next year.