

31 May 2021

Paul McKnight
Chair, Defamation Working Party
Review of Model Defamation Provisions
C/o Policy, Reform and Legislation
NSW Department of Communities and Justice
GPO Box 31
Sydney NSW 2001

By email: defamationreview@justice.nsw.gov.au

Dear Mr McKnight

Stage 2 of the Review of the Model Defamation Provisions

1. Women's Legal Service NSW (WLS NSW) thanks the Department for the opportunity to comment on Discussion Paper for the Stage 2 Review of the Model Defamation Provisions.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. This submission addresses only some of the issues raised in Part B of the Discussion Paper.
4. WLS NSW recommends that defamation laws, procedures and costs be reformed by introducing an absolute privilege to better protect complainants of sexual harassment and sexual assault. The introduction of an absolute immunity for such matters would discourage the commencement of defamation proceedings in such matters and, where commenced, facilitate their timely summary dismissal.
5. In spite of protections that exist in laws such as section 111 of the *Sex Discrimination Act 1984* and in Schedule 1 of the Model Defamation Provisions, the threat of defamation proceedings being brought against complainants still acts as a deterrent to reporting to state and commonwealth regulatory bodies such as the Australian Human Rights Commission, the Fair Work Commission and the NSW Worker's Compensation Commission.
6. The threat of defamation proceedings also acts as a deterrent and as a tool to punish, intimidate and silence victim-survivors who report sexual violence and sexual assaults to police.



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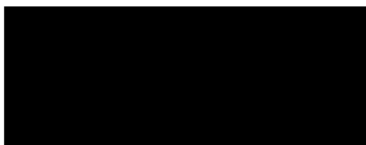


7. WLS NSW has advised many clients who are concerned that reporting sexual assaults and sexual violence to police will incite the perpetrator to bring defamation proceedings against them. We have also advised a number of clients who have received correspondence threatening defamation proceedings or in circumstances where defamation proceedings have been commenced against them. In one matter, WLS NSW represented a client who had defamation proceedings brought against her after she reported a sexual assault to police. While the proceedings against our client were ultimately dismissed, the proceedings caused her untold stress and distress as she was forced to relive the sexual assault through the proceedings. Further, without the support from WLS NSW, the costs of the proceedings would have been prohibitive. Unfortunately, confidentiality provisions prevent WLS NSW from talking about this case in any detail.
8. The introduction of an absolute privilege will send a strong message to victim-survivors that their reports of violence are important, that they will be protected in doing so and that there is public interest in reports to police. It will also introduce a barrier to perpetrators seeking to use defamation proceedings as a threat and to victimise those they have assaulted.
9. The introduction of an absolute privilege will also provide a pathway for a safer and more transparent reporting culture outside of police reports and encourage employers and organisations to better respond to complaints of sexual harassment and sexual violence, to introduce and utilise enhanced prevention strategies and hold perpetrators to account without fear of defamation proceedings.
10. In summary, WLS NSW supports the following protections:
 - 10.1 Statements made to police and statutory investigative agencies should be protected by absolute privilege, subject to appropriate safeguards.
 - 10.2 Complaints of unlawful conduct made to employers and professional disciplinary bodies should be protected by absolute privilege, subject to appropriate safeguards.
 - 10.3 As well as extending absolute privilege, the defamation legal processes should be reformed to provide for a speedy determination of a vexatious or unmeritorious complaint in a form that minimises the cost and evidentiary burden on the defendant to such proceedings.

If you would like to discuss any aspect of this submission, please contact me on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW



Helen Campbell
Executive Officer