



QUEENSLAND PARLIAMENT **COMMITTEES**

Defamation and Other Legislation Amendment Bill 2025

Justice, Integrity and Community Safety Committee



Report No. 23

58th Parliament, November 2025

Justice, Integrity and Community Safety Committee

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Chair's Foreword

This report presents a summary of the Justice, Integrity and Community Safety Committee's examination of the Defamation and Other Legislation Amendment Bill 2025.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles—that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the Human Rights Act 2019.

The committee notes that the Bill forms part of the ongoing national defamation reform process endorsed by the Standing Council of Attorneys-General. Aligning Queensland's defamation laws with the model provisions agreed between jurisdictions supports greater national consistency, improves certainty for stakeholders, and promotes a coherent and contemporary legal framework across Australia.

Stakeholders acknowledged the importance of maintaining alignment with the nationally agreed reforms, and the committee considers that the Bill appropriately implements Queensland's commitments while preserving necessary safeguards for rights and liberties.

On behalf of the committee, I thank those organisations that made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice.

I commend this report to the House.



Mr Marty Hunt MP

Chair

Executive Summary

On 14 October 2025, the Honourable Deborah (Deb) Frecklington, Attorney-General, Minister for Justice and Minister for Integrity, introduced the Defamation and Other Legislation Amendment Bill 2025 (Bill) to the Legislative Assembly. The Bill was referred to the Justice, Integrity and Community Safety Committee (committee) for detailed consideration.

The objectives of the Bill are to amend the *Defamation Act 2005* to implement changes that have been agreed to nationally. The amendments will aim to:

- provide a digital intermediary some limited protections from liability and a defence for third-party content
- allow for an offer to make amends including the removal of or restrictions of access to defamatory digital content
- enhance court powers so they can:
 - order intermediaries (even if not parties to a case) to remove or block defamatory content
 - require disclosure of the identity of anonymous posters, considering specific factors
- extend the defence of absolute privilege to officials of Australian police forces or services while they are acting in their official capacities
- allow the service of notices and other documents via email, messaging or other electronic communication to an electronic address or location indicated by the recipient, and
- include measures to manage the transition from the old to the new legal framework.

The committee received and considered the following evidence:

- 5 written submissions from stakeholders
- a written briefing provided by the Department on 21 October 2025
- a public briefing provided by the Department on 10 November 2025.

The committee is satisfied that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament as required by the *Legislative Standards Act 1992*. The committee found that the Bill is compatible with human rights as defined in the *Human Rights Act 2019*.

The committee made one recommendation, found at page v of this report.

Recommendations

Recommendation 1 4
The committee recommends that the Bill be passed 4

Glossary

CCC	Crime and Corruption Commission
Committee	Justice, Integrity and Community Safety Committee
Defamation Act	<i>Defamation Act 2005</i>
Department / DOJ	Department of Justice
DWP	Defamation Working Party
FLP	Fundamental Legislative Principle
HRA	<i>Human Rights Act 2019</i>
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
MDP	Model Defamation Provisions
NQWLS	North Queensland Women's Legal Service
SCAG	Standing Council of Attorneys-General

1. Overview of the Bill

On 14 October 2025, the Honourable Deborah (Deb) Frecklington, Attorney-General, Minister for Justice and Minister for Integrity, introduced the Defamation and Other Legislation Amendment Bill 2025 (Bill) to the Legislative Assembly. The Bill was referred to the Justice, Integrity and Community Safety Committee (committee) for detailed consideration.

1.1. Aims

The objectives of the Bill are to amend the *Defamation Act 2005* (Defamation Act) to implement changes that have been agreed to nationally. The amendments will aim to:

- provide a digital intermediary some limited protections from liability and a defence for third-party content
- allow for an offer to make amends including the removal of or restrictions of access to defamatory digital content
- enhance court powers so they can:
 - order intermediaries (even if not parties to a case) to remove or block defamatory content
 - require disclosure of the identity of anonymous posters, considering specific factors
- extend the defence of absolute privilege to officials of Australian police forces or services while they are acting in their official capacities
- allow the service of notices and other documents via email, messaging or other electronic communication to an electronic address or location indicated by the recipient, and
- include measures to manage the transition from the old to the new legal framework.

The Bill also seeks to amend the existing criminal defamation offence in section 365 of the *Criminal Code Act 1899* (Qld) (Criminal Code) to ensure that the new defence for digital intermediaries and the new statutory exemptions from liability operate as a lawful excuse in criminal defamation proceedings. This would ensure that digital intermediaries who may be protected by the new exemptions or defence in civil proceedings do not remain liable for criminal defamation.¹

1.2. Context

In November 2004, the Attorneys-General of the States and Territories agreed to support the enactment of uniform model provisions in relation to the law of defamation called the 'Model Defamation Provisions' (MDPs). The MDPs were prepared by the Australasian Parliamentary Counsel's Committee and subsequently enacted by each State and Territory. All States and Territories are also parties to the MDP Intergovernmental

¹ Explanatory notes, pp 2-3.

Agreement which establishes the Model Defamation Law Working Party (DWP). The DWP reports to the Standing Council of Attorneys-General (SCAG) on proposals to amend the MDPs.² The then Council of Attorneys-General reconvened to review the MDPs in 2018 with New South Wales leading Stage 1 reviews in 2019 and 2020.³

The DWP recommended changes to the MDPs, which were prepared by the Australasian Parliamentary Counsel's Committee. These changes formed part of Stage 1 of the defamation law reform process. In July 2020, the Council of Attorneys-General unanimously agreed to support the enactment of these amendments, known as the Model Defamation Amendment Provisions 2020. Queensland implemented the changes through the introduction of the *Defamation (Model Provisions) and Other Legislation Amendment Act 2021*.⁴

Stage 2 of the review began in 2021 and was divided into two parts. Part A, led by New South Wales, focused on the liability of internet intermediaries for defamation, particularly regarding third-party content. Part B, led by Victoria, examined whether the defence of absolute privilege should be extended to include reports made to police and certain complaint-handling bodies. For both parts, the DWP recommended further amendments to the MDPs, again prepared by the Australasian Parliamentary Counsel's Committee.⁵

On 22 September 2023, the SCAG, except for South Australia, approved the recommended amendments for both Part A and Part B, subject to Cabinet processes where required. The Part A amendments are published as the *Model Defamation Amendment (Digital Intermediaries) Provisions 2023*, and the Part B amendments as the *Model Defamation Amendment (Absolute Privilege) Provisions 2023*. Both documents, along with explanatory notes, are available on the Australasian Parliamentary Counsel's Committee website.⁶

The following key issues were raised during the committee's examination of the Bill,⁷ which are discussed in Section 2 of this report:

- new definitions in the Defamation Act
- digital intermediaries and the defences available to them
- offers to make amends
- consideration factors for courts
- court orders against digital intermediaries
- extension of the defence of absolute privilege.

² Explanatory notes, p 1.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 1.

⁵ Explanatory notes, p 2.

⁶ Explanatory notes, p 2.

⁷ Note that this section does not discuss all consequential, minor or technical amendments.

1.3. Consultation

The explanatory notes indicate that stakeholder consultation was undertaken by the DWP to inform the development, drafting process and finalisation of amendments. This included a discussion paper circulated in April 2021 to which 48 submissions were received and four large roundtables held to discuss the issues raised in the submissions. Following this, in August 2022 two exposure drafts regarding the Part A and B amendments were circulated with 36 and 19 written submissions received respectively.⁸

1.4. Inquiry process

The committee received and considered the following evidence:

- 5 written submissions from stakeholders
- a written briefing provided by the Department on 21 October 2025
- a public briefing provided by the Department on 10 November 2025.

1.5. Legislative compliance

The committee assessed whether the Bill complies with the requirements for legislation as contained in the *Parliament of Queensland Act 2001*, the *Legislative Standards Act 1992* (the LSA),⁹ and the *Human Rights Act 2019* (the HRA).¹⁰



1.5.1. Legislative Standards Act 1992

Assessment of the Bill's compliance with the LSA identified a potential issue with the reversal of the onus of proof which is analysed in Section 2.8 of this report.

The committee is satisfied that the explanatory notes tabled with the Bill comply with the requirements of Part 4 of the LSA. The explanatory notes contain a sufficient level of information, background and commentary to facilitate understanding of the Bill's aims and origins.



1.5.2. Human Rights Act 2019

Assessment of the Bill's compatibility with the HRA identified issues with the following, which are analysed further in Section 2.9:

- freedom of expression (section 21 of the HRA)
- the right to privacy and reputation (section 25(a) of the HRA)
- the right to a fair hearing (section 31 of the HRA).

The committee found that the Bill is compatible with human rights. It considered that any potential incompatibility with the human rights set out in the HRA was justified in the circumstances and necessary to achieve the purpose of the Bill.

⁸ Explanatory notes, p 4.

⁹ *Legislative Standards Act 1992* (LSA).

¹⁰ *Human Rights Act 2019* (HRA).

A statement of compatibility was tabled with the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.6. Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.



Recommendation 1

The committee recommends that the Bill be passed.

2. Examination of the Bill

This section discusses the key themes which were raised during the committee's examination of the Bill.

2.1. New definitions in the *Defamation Act 2005*

In amending the Defamation Act, the Bill introduces some key definitions that seek to modernise Queensland's defamation legislation, including:

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 1 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.

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.

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 1 or more other persons

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.¹¹

2.2. Digital intermediaries

2.2.1. Exemption from liability and defence for digital intermediary

The Bill includes amendments to the Defamation Act which will provide digital intermediaries with some limited protections from liability and a defence for third-party content.¹² While the aim of these amendments is to achieve national uniformity of defamation legislation, the contextual background for such amendments lies in several problems experienced in litigation, including difficulty in applying the current defence of innocent dissemination to contemporary digital intermediaries.¹³

The introduction of this defence seeks to:

*make it clear that a complaint (including basic information) given to a digital intermediary operates as notice of the defamatory matter and provides a specific timeframe (seven days) for action to be taken by the digital intermediary to have the benefit of the defence.*¹⁴

Accordingly, the Bill introduces amendments so that digital intermediaries will be exempt from liability for defamation for the publication of digital matter if their involvement is limited to providing technical services such as caching, conduit, or storage. Digital intermediaries must also not take an active role in the publication of the material such as initiating, promoting, or editing the content. Additionally, search engine providers are exempt if their role is restricted to offering an automated process that allows users to generate search results or links to webpages where the matter is located. These provisions aim to clarify the responsibilities of digital platforms and ensure that passive intermediaries are not unfairly held liable for third-party content.¹⁵

The Bill provides a digital intermediary with a defence in relation to defamatory digital matter posted by a third party if reasonable steps are taken, whether before or within 7 days after receiving a complaint, to remove or prevent access to the matter.¹⁶ In order to

¹¹ Bill, cl 9.

¹² DOJ, written briefing, 21 October 2025, p 1.

¹³ DOJ, written briefing, 21 October 2025, p 6.

¹⁴ DOJ, written briefing, 21 October 2025, p 6.

¹⁵ Bill, cl 9.

¹⁶ Bill, cl 9 (new s 31A(c)).

use the defence, the defendant must prove that they were a digital intermediary in relation to the publication of the defamatory digital matter and that at the time of the publication, had an accessible complaint mechanism for the plaintiff to use.¹⁷ Digital intermediaries must also prove that, if the plaintiff gave them a written complaint, they or another person took reasonable access prevention steps (if available). These steps must have been taken before the complaint was received or within seven days after receipt of the complaint.¹⁸

The complaints mechanism provided must be accessible and can take the form of an easily accessible address, location, email address, direct messaging service or even an online complaints form.¹⁹ For example, in the case of a community Facebook page—where they may not have the resources to create a complex complaints mechanism—the Department advised that ‘part of the reason for casting the definition of ‘accessible complaints mechanism’ quite broadly is to try to take advantage of the processes or complaint mechanisms that might already be out there’.²⁰

This new defence seeks to overcome several problems with the existing defence of innocent dissemination in its application to digital intermediaries, including:

- the defendant must prove they were a subordinate distributor—this includes having to prove they did not have any capacity to exercise editorial control of the content prior to publication. It is presently unclear when one may be considered to have the capacity to exercise such control, given the variety of contemporary digital intermediaries
- the defendant must prove they neither knew, nor ought to have reasonably known the matter was defamatory and that there was no element of negligence underpinning the lack of knowledge. The explanatory notes indicate that this test creates uncertainty about the knowledge requirements for the defence
- the defence presently provides no specific timeframe within which the defendant must act after the defendant has the required knowledge about the defamatory matter.²¹

The Bill also proposes that the new defence may only be defeated if the plaintiff can prove the defendant was ‘actuated by malice in establishing or providing the online service by means of which the matter was published’.²²

2.3. Offer to make amends

Clause 6 of the Bill introduces amendments which will allow offers to make amends in relation to the publication of digital matter. This may include an offer to take access prevention steps. It will also allow a publisher to include an offer to take access prevention

¹⁷ DOJ, written briefing, 21 October 2025, p 6.

¹⁸ DOJ, written briefing, 21 October 2025, p 6.

¹⁹ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 6.

²⁰ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 6.

²¹ Explanatory notes, p 8.

²² Explanatory notes, p 8.

steps instead of, or in addition to either or both mandatory remedial offers. These amendments aim to provide publishers with greater flexibility in dealing with complaints about the publication of defamatory digital matter and reasonable access steps to be taken by the publisher as an alternative to making mandatory remedial offers.²³

2.4. Court orders

2.4.1. Consideration of certain matters by courts

The Bill proposes amendments that would require a court, in making an order for, or in the nature of preliminary discovery, to consider the objects of the Defamation Act. This is in addition to elements of privacy, safety or other public interest matters that may arise if an order for discovery is made. For example,

*the provision would require the court to consider the potential for domestic violence against a poster of digital matter whose address is being sought by the alleged perpetrator. The provision does not limit the matters the court may take into account in addition to these two matters.*²⁴

2.4.2. Court orders against digital intermediaries

The Bill also confers a power upon courts to make orders against digital intermediaries to take access prevention steps in relation to the publication of digital matter if they are not parties to certain defamation proceedings. As set out in section 2.1 of this report, ‘access prevention steps’ are defined as steps taken to remove the matter or block, disable or otherwise prevent access to the matter, whether by some or all persons.²⁵ The power can only be exercised in relation to a digital intermediary even if the intermediary is not liable for defamation because of a statutory provision.²⁶

2.5. Defence of absolute privilege

Currently, there is no provision at law for the defence of absolute privilege to apply to publications to police forces or services.²⁷ The Bill amends the Defamation Act to extend the defence of absolute privilege to further circumstances. This extension will enable the defence to be applied to publications of defamatory matter to a person who, at the time of the publication, is an official of a police force or service of an Australian jurisdiction. The official must also be acting in their official capacity when they receive the publication.²⁸

The explanatory notes state that this amendment has been brought about by some anecdotal evidence which ‘... indicates the threat of potential defamation proceedings may be deterring some people from making complaints to police forces or services and other complaints handling bodies’.²⁹ Further, stakeholder feedback has suggested there is uncertainty about the kinds of publications that will attract the defence of qualified privilege

²³ DOJ, written briefing, 21 October 2025, p 7.

²⁴ Explanatory notes, p 6.

²⁵ Bill, cl 9.

²⁶ Explanatory notes, pp 8-9.

²⁷ DOJ, written briefing, 21 October 2025, p 9.

²⁸ Bill, cl 8, amending s 27 of the Defamation Act; Explanatory notes, p 6.

²⁹ Explanatory notes, p 7.

at general law.³⁰ This appears to be due to the current requirement for the publisher to have an interest in communicating, or a legal, social or moral duty to communicate the information. The recipient is also required to have a corresponding or reciprocal interest or duty.³¹

2.6. Miscellaneous and transitional amendments

2.6.1. Giving of notices and other documents

Currently, the Defamation Act provides that a notice or other document may only be served via email to an address specified by the recipient. The Bill contains some technical amendments to allow for notices or documents to be served via any form of electronic communication provided by the recipient for that purpose. This ensures modernisation of the legislation and provides for service via other platforms such as direct messaging applications.³²

The amendments specifically contain the term ‘indicated’ to capture conduct by or on behalf of the recipient of an electronic method for receipt of material, not just an express statement. The Department’s written briefing refers to ‘examples included in the Bill [which] refer to an email or direct messaging address set out on a social media forum for contacting the administrator or the poster; or a form on a website enabling a user to contact the digital intermediary’.³³

2.6.2. Savings, transitional and other provisions

The Bill contains numerous transitional provisions set out at clause 16 as to when the new exemptions, defences and rules will come into effect. They are summarised as follows:

- new section 52—exemptions and defences for digital intermediary: save for one exception in the case of repeated publications on the same matter, these will only apply to causes of action accruing after commencement
- new section 53—offers to make amends: regardless of when publication occurred, the new rules will only apply to offers made after commencement
- new section 54—preliminary discovery and non-party orders: save for where orders are varied or revoked prior to commencement, the new rules will apply only to orders made after commencement, regardless of when the cause of action or accrued or proceedings started
- new section 55—absolute privilege defence: new rules will apply only after commencement
- new section 56—service of documents: new rules apply to documents served after commencement, regardless of when proceedings started or cause of action accrued.

³⁰ Explanatory notes, p 7.

³¹ Explanatory notes, p 7.

³² DOJ, written briefing, 21 October 2025, p 10.

³³ DOJ, written briefing, 21 October 2025, p 10.

2.6.3. Amendment of Criminal Code

The Bill amends section 365 of the Criminal Code to provide for the operation of the new defence for digital intermediaries and the statutory exemptions from liability as lawful excuses in criminal defamation proceedings. The Department states that ‘the amendments will ensure that digital intermediaries who may be protected by the new exemptions or defence in civil proceedings do not remain liable for criminal defamation’.³⁴



2.7. Stakeholder Submissions and Department Advice

2.7.1. Stakeholder submissions

Five submissions were made to the committee’s inquiry. These submissions discussed issues such as the new exemptions introduced for digital intermediaries, the extension of the defence of absolute privilege and court processes. All submissions were generally supportive of the Bill and made some suggestions for further amendments.

Digital intermediaries

The Local Government Association of Queensland (LGAQ) expressed concern that councils will face practical implications following the Bill’s implementation. They submitted that there was a need to determine whether ‘council-run platforms constitute ‘digital intermediaries’ and to ensure that moderation practices do not disqualify them from the new defences’.³⁵ The LGAQ suggested that the Bill be amended to distinguish between a ‘digital intermediary’ and a ‘publisher’ in the unique context of local councils to ‘ensure consistency and fairness across Queensland councils’.³⁶ They also recommended ongoing consultation between the State Government and the LGAQ in developing suitable education and training materials particularly for councils.³⁷

Extension of defence of absolute privilege

The Crime and Corruption Commission (CCC) stated that they ‘...should be included as a complaints-handling body to which the defence of absolute privilege applies’.³⁸ They reasoned this was necessary owing to the unique position of the CCC in receiving reports of corrupt conduct and to protect the individuals that make those reports.³⁹

While the CCC acknowledged that their governing legislation provides a defence of absolute privilege against defamation for publications to or by the CCC in performing their functions, they consider inclusion within the Defamation Act would further facilitate reporting of wrongdoing in Queensland.⁴⁰

³⁴ DOJ, written briefing, 21 October 2025, p 11.

³⁵ Submission 3, p 2.

³⁶ Submission 3, p 2.

³⁷ Submission 3, p 2.

³⁸ Submission 1, p 2.

³⁹ Submission 1, p 2.

⁴⁰ Submission 1, p 2.

The North Queensland Women's Legal Service (NQWLS) supported the extension of the defence of absolute privilege to police officials but questioned whether it may be a double-edged sword as:

*perpetrators will also enjoy the security of absolute privilege for publication of defamatory material regarding victims to police.*⁴¹

The NQWLS concluded that, on balance, the benefit to victims of being able to freely report abuse outweighs any potential risk.⁴² They also queried whether consideration would be given to extending privilege to complaints made to other complaints handling bodies such as the Victims' Commissioner.⁴³

The Victims' Commissioner similarly supported the extension of absolute privilege to police stating that it will 'facilitate the dignity of victim-survivors and give them greater choice and control'.⁴⁴ Furthermore, the extension will prevent threats or actual commencement of defamation proceedings.⁴⁵

Court processes

The NQWLS and LGAQ supported the introduction of various provisions to ensure court processes better serve the interest of victims of domestic violence.⁴⁶ In particular, the NQWLS highlighted clause 7 of the Bill and the insertion of new section 23A which will require the court, in making an order for preliminary discovery, '...to consider the objects of the Act and the privacy, safety or other public interest matters that may arise if the order is made'.⁴⁷

The NQWLS shared with the committee that they constantly hear from their clients about:

- ways legal actions and court processes are used to harass, intimidate, or punish victims of domestic violence.
- threats to take legal action, including defamation action, are routinely used to silence women.
- court processes being used by sophisticated perpetrators to access information about victims, including access to current contact information.⁴⁸

The Victims' Commissioner shared similar stories in their submission surrounding the risk of defamation proceedings being commenced as a tactic in response to allegations of gender-based violence.⁴⁹

⁴¹ Submission 2, p 2.

⁴² Submission 2, p 2.

⁴³ Submission 2, p 3.

⁴⁴ Submission 4, p 4.

⁴⁵ Submission 4, p 4.

⁴⁶ Submission 2, p 2; Submission 3, p 1.

⁴⁷ Submission 2, p 2.

⁴⁸ Submission 2, pp 2-3.

⁴⁹ Submission 4, p 2.

The NQWLS suggested amendments to the Bill that would require the existence of temporary or final protection orders made by any Australian State or Territory to be disclosed upon filing of an application or any time thereafter if they subsequently come into existence during the proceedings.⁵⁰ The NQWLS also suggested that the objects of the Act be amended at section 3(d) to include the word 'safe' so that it may read as 'to promote safe, speedy and non-litigious methods of resolving disputes about the publication of defamatory matter'.⁵¹

The LGAQ commented that the provisions in the Bill which will enable courts to make digital intermediaries remove or block content which is defamatory will assist in addressing defamatory and abusive content aimed at councillors and staff.⁵²

2.7.2. Department advice

Digital intermediaries

In response to the LGAQ's concerns about whether council-run platforms constitute digital intermediaries and the need to clarify amendments to the Bill, the Department stated that such determinations will be the responsibility of persons or entities seeking to rely on the new defence offered to digital intermediaries.⁵³

The new exemption was discussed at the public briefing. The Department advised that this is intended to be a 'positive step forward, not only for digital intermediaries but also for those who would like to have a matter they consider is defamatory of them addressed'.⁵⁴ The Department provided a practical example of the operation of the defence in the context of a community Facebook page. It explained that if a person publicly alleges that another person's comment on a community association's Facebook page is defamatory, the association may rely on the new defamation defence provided certain steps are followed.

The first requirement is that the association must have an accessible complaints mechanism in place. This is broadly defined and may include any clearly available method for lodging a complaint.⁵⁵ The intent is to allow for quite a broad range of ways that someone could complain about a potentially defamatory matter.

If a complaint is made through this mechanism, the association must assess it and take reasonable steps to prevent further harm within 7 days. This may involve reviewing the comment and deciding whether to remove it or leave it in place. Provided these steps are taken within the required timeframe of 7 days, the defence could continue to be relied upon.⁵⁶

⁵⁰ Submission 2, p 2.

⁵¹ Submission 2, p 2.

⁵² Submission 3, p 1.

⁵³ DOJ, response to written submissions, 4 November 2025, p 1.

⁵⁴ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 4.

⁵⁵ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 4.

⁵⁶ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 4.

The Department acknowledged the LGAQ's suggestion for ongoing consultation between the State Government and the LGAQ in developing resources and model policies for councils relative to the new defence. They responded that the new defence '...will apply uniquely in different circumstances and may depend on a range of factors' and so digital intermediaries (such as the LGAQ) are encouraged to consider use of the defence on a case-by-case basis.⁵⁷

Extension of defence of absolute privilege

In regard to submissions requesting the defence of absolute privilege be extended beyond members of the Police Force, the Department explained that the Bill does not propose to extend the defence in such a way. Referencing the submission made by the CCC, the Department advised that a sufficient defence of absolute privilege already exists in section 335(6) of the *Crime and Corruption Act 2001*.⁵⁸

At the public briefing, the Department reiterated that no further extension was being considered at this time and that the defence had already been extended to certain statutory bodies through the enabling legislation.⁵⁹ The Department did, however, acknowledge that there has been a mixed approach across other jurisdictions and that some states had prescribed additional entities while other jurisdictions had not prescribed any entities at all.⁶⁰

The Department considered LGAQ's proposal to extend privilege or qualified privilege to statements made by councillors and officers while performing their statutory duties, to be outside the scope of the Bill.⁶¹

At the public briefing, the Department explained the rationale for extending the defence to the Police Force:

*... if someone were to make a complaint to police about sexual assault, then there is a scenario where the person whom that complaint is made against could choose to sue the person for defamation for having alleged that against them. There are existing defences that the person who made the complaint to police could try to rely on in giving the complaint to police. What the Defamation Working Party found through its review is that those existing defences do not particularly meet the job of people not being dissuaded from making a complaint to police because of a threat of defamation proceedings...*⁶²

The Department further explained that the Bill will provide 'a complete indemnity' for anyone who makes a complaint to police; regardless of the content or nature of the complaint. The intent of the measures is to address what is known as the 'chilling effect'

⁵⁷ DOJ, response to written submissions, 4 November 2025, p 5.

⁵⁸ DOJ, response to written submissions, 4 November 2025, p 4.

⁵⁹ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 5.

⁶⁰ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 5.

⁶¹ DOJ, response to written submissions, 4 November 2025, p 5.

⁶² DOJ, public briefing transcript, Brisbane, 10 November 2025, p 3.

and to ensure that people are not dissuaded or discouraged from making what otherwise might be a valid complaint to police.⁶³

Court processes

In response to a question on notice taken at the public briefing, the Department provided data on the median timeframe for defamation proceedings to progress through the Queensland Courts. A copy of the data can be found on the committee's website.

In response to NQWLS' concerns about preliminary discovery orders, the Department advised that the amendments are consistent with the MDPs agreed to by the SCAG. This is designed to ensure that privacy, safety and other public interest matters are considered by the court when making such an order. The Department explained:

*For example, the court will need to consider any evidence (such as a protection order) suggesting the poster of digital matter is in fear of domestic violence from the person seeking an order to obtain the poster's address.*⁶⁴

The Department considered that ensuring uniformity with other Australian jurisdictions was paramount and that it would also assist potential parties in knowing their rights, the limitations under the laws and limit the scope for forum shopping between States and Territories.⁶⁵

In response to the NQWLS' suggestion to include the word 'safe' within the objects of the Act, the Department stated that ensuring uniformity with other jurisdictions was desirable and that the objects of the Defamation Act are consistent with the MDPs.⁶⁶ Regarding submissions about monitoring the operation of provisions, the Department advised that it will monitor implementation of the reforms and consider if any changes are needed.⁶⁷



2.8. Fundamental Legislative Principles

2.8.1. Reversal of onus of proof

To have sufficient regard to rights and liberties of individuals, legislation should not reverse the onus of proof in criminal proceedings without adequate justification.⁶⁸ This is related to the common law principle of the presumption of innocence: a person is presumed innocent until proven guilty by the prosecution.⁶⁹

The Bill raises this issue of fundamental legislative principle because the proposed statutory exemptions from defamation liability⁷⁰ and the defence for digital intermediaries⁷¹

⁶³ DOJ, public briefing transcript, Brisbane, 10 November 2025, p 3.

⁶⁴ DOJ, response to written submissions, 4 November 2025, p 2.

⁶⁵ DOJ, response to written submissions, 4 November 2025, p 2; DOJ, public briefing transcript, Brisbane, 10 November 2025, p 3.

⁶⁶ DOJ, response to written submissions, 4 November 2025, p 2.

⁶⁷ DOJ, response to written submissions, 4 November 2025, p 2.

⁶⁸ LSA, s 4(3)(d).

⁶⁹ See for example, Australian Government, 'Presumption of innocence: public sector guidance sheet', <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/presumption-innocence>.

⁷⁰ Bill, cl 5 (Defamation Act, new ss 10C, 10D).

⁷¹ Bill, cl 9 (Defamation Act, new s 31A).

(which apply to civil proceedings under the Defamation Act) can operate as lawful excuses in a prosecution for criminal defamation under the Criminal Code.⁷²

Under the Criminal Code, the prosecution must prove there is no lawful excuse, but only after the accused provides some evidence suggesting such an excuse.⁷³ This means the burden of proof to establish the lawful excuse rests with the accused, which is a reversal of the usual position where the prosecution bears the onus of proof.

While technically amounting to a reversal of the onus of proof, the explanatory notes explain that it is consistent with the general approach in criminal proceedings that the accused person must satisfy the evidential onus of proof for any defence or excuse they raise. If this evidential onus is satisfied, then the prosecution bears the onus of negating the excuse or defence beyond reasonable doubt (i.e. the prosecution retains the legal onus).⁷⁴

The explanatory notes justify the reversal on the basis that the relevant matters would be peculiarly within the knowledge of the accused and they are better positioned than the prosecution to meet the evidential burden.⁷⁵ Given the exemptions and defences relate to circumstances that include, for example, where a digital intermediary may have had to take certain steps to remove defamatory matter or acted simply as a conduit to that matter being published, it seems appropriate that the digital intermediary has the onus of adducing such evidence if they want to rely on the exemption or defence as a lawful excuse in criminal proceedings.

Committee comment



The committee acknowledges that some provisions may technically amount to a reversal of the onus of proof, however, the committee considers that this is consistent with well-established approaches in criminal proceedings. The committee therefore does not consider that the Bill inappropriately impinges upon fundamental legislative principles.



2.9. Human Rights Act

This section discusses the key human rights issues arising from the Bill and the statement of compatibility which was tabled with the Bill. Where a reference is made to human rights in this section of the report, this refers to human rights as defined in the HRA.

2.9.1. Nature of the relevant rights

The right to freedom of expression

⁷² Bill, cl 20 (*Criminal Code Act 1899* (Qld) (Criminal Code), amends s 365).

Note that fundamental legislative principles are concerned with the rights and liberties of individuals, not corporations. Therefore, this analysis is limited to digital intermediaries and search engine providers where an individual is involved.

⁷³ Criminal Code, s 365(4).

⁷⁴ Explanatory notes, pp 3-4.

⁷⁵ Explanatory notes, p 4.

Under the HRA, the right to freedom of expression means that every person has the right to hold an opinion without interference. Further, every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether orally, in writing, in print, by way of art or in another medium chosen by the person.⁷⁶

The right to privacy and reputation

The right to privacy under the HRA protects individuals against unlawful or arbitrary interferences with their privacy, family, home or correspondence.⁷⁷ It also includes the right not to have the person's reputation unlawfully attacked.⁷⁸

The right to a fair hearing

The HRA provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.⁷⁹

The concept of a fair hearing is broad and includes the principle of the presumption of innocence.⁸⁰ This is relevant to the Bill because of the amendments relating to exemptions from liability and defences.

Rights in criminal proceedings

The rights in criminal proceedings are also relevant to the Bill. This is because although defamation proceedings are usually brought in the civil courts, there is a criminal offence of defamation in the Criminal Code.⁸¹

Under the HRA, a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.⁸² The presumption requires that the prosecution has the onus of proving the offence, guilt cannot be determined until the offence has been proven beyond reasonable doubt and the accused has the benefit of the doubt.⁸³

2.9.2. Limitations on human rights

Exemption from liability – digital intermediaries and search engine providers

Right to privacy and reputation

The proposed exemptions from liability potentially limit the right to reputation. This is because they would allow digital defamatory material to continue to be stored or accessed

⁷⁶ HRA, s 21(1) and (2).

⁷⁷ HRA, s 25(a). The notion of an arbitrary interference extends to interferences which may be lawful but are unreasonable, unnecessary or disproportionate, or random or capricious. Nicky Jones and Peter Billings, *An Annotated Guide to the Human Rights Act 2019 (Qld)*, para 4.469 (p 264).

⁷⁸ HRA, s 25(b).

⁷⁹ HRA, s 31(1).

⁸⁰ Nicky Jones and Peter Billings, *An Annotated Guide to the Human Rights Act 2019 (Qld)*, para 4.690 (p 338).

⁸¹ Criminal Code, sch 1, s 365.

⁸² HRA, s 32(1).

⁸³ Statement of compatibility, p 3.

even if a digital intermediary or search engine provider knows, or ought to have known, that the matter is defamatory. While the individual may still bring proceedings against the publisher of the material, they would lose the ability to bring proceedings against a digital intermediary or search engine provider because of the exemption.⁸⁴

The purpose of the limitation is to clarify the scope of liability for digital intermediaries and search engine providers, with a view to allowing proceedings for defamation to be determined expeditiously.⁸⁵ Another purpose is to minimise the need for these intermediaries to actively monitor and interfere with how individuals are using their services, which arguably promotes the freedom of expression.⁸⁶ A broader purpose is to prevent ‘forum shopping’ between jurisdictions and ensure that the model defamation provisions, on which the Bill is based, are consistent with other States and Territories in Australia.⁸⁷

There is a rational connection between the limitations and their purpose—providing clear statutory exemptions is likely to assist in determining liability at an earlier stage of proceedings and allow for quicker resolution of defamation disputes. The exemptions are framed narrowly, have strict criteria and are limited to intermediaries that typically have passive, rather than active, participation in publishing digital matter.⁸⁸ For example, an exemption would not apply if a digital intermediary promoted the matter or edited the content of the matter.⁸⁹ In this sense, the amendments are framed in a way that does only what is necessary to achieve the purpose.

Right to a fair hearing and rights in criminal proceedings

The statutory exemptions may also limit the right to a fair hearing and rights in criminal proceedings. This is because the digital intermediary or search engine provider would have the burden of adducing evidence to demonstrate that they meet the criteria for establishing the exemption (or lawful excuse for criminal defamation).⁹⁰ The purpose of the limitation on human rights is to ensure that an exemption to liability can be provided fairly, allowing the accused to adduce evidence that is likely to be uniquely in their knowledge in order to be exempt from liability.⁹¹

⁸⁴ This may also impact their right to property, in that the ability to bring proceedings could amount to a chose in action. HRA, s 24.

⁸⁵ Statement of compatibility, p 5.

⁸⁶ Statement of compatibility, p 5.

⁸⁷ Statement of compatibility, p 6.

⁸⁸ Statement of compatibility, p 6.

⁸⁹ Bill, cl 5 (Defamation Act, new s 10C(1)(c)).

⁹⁰ Note that only individuals have human rights. Therefore, this analysis is limited to digital intermediaries and search engine providers where an individual is involved.

⁹¹ Statement of compatibility, p 5.

Committee comment

It is the committee's view that there does not appear to be any other way to ensure the exemptions can operate in practice without a reversal of the evidential onus. In the circumstances, the committee considers the purpose of the Bill to outweigh the limitations on the right to privacy and reputation and to sufficiently support the reversal of the onus of proof.

Defence for publication – digital intermediaries***Freedom of expression***

The introduction of a new defence may limit the freedom of expression by incentivising intermediaries to take active steps to prevent and remove digital matter that *may* be defamatory (i.e. matter that is the subject of a complaint but has not been found by a court to be defamatory).⁹² This may impact on the free flow of information and ideas between people.

The purpose of the limitation is to 'promote the right of persons to not have their reputation unlawfully attacked through publication of defamatory digital matter, consistent with their right to privacy and reputation.'⁹³ Another purpose is to provide clarity in the law following the High Court decision in *Fairfax Media Publications Pty Ltd and Others v Voller*⁹⁴ and remove the need for digital intermediaries to review or monitor every post on their online service.⁹⁵

There is a rational connection between the purpose and the limitation, as the proposed provisions are likely to incentivise intermediaries to take active steps to moderate potentially defamatory content but not go so far as to require them to review every post.⁹⁶ The defence has an appropriate carve-out, in that it would not apply in circumstances of malice. For example, it would not apply if a person created a Facebook page dedicated to hosting hateful comments about another person and encourages others to post hateful comments.⁹⁷

The 7 day timeframe also acts as a safeguard to allow adequate time for a digital intermediary to properly consider the substance of a complaint (potentially lessening the limits on freedom of expression by allowing full consideration of the issues before potentially taking action, such as by removing digital matter).⁹⁸ A digital intermediary

⁹² Statement of compatibility, p 7.

⁹³ Statement of compatibility, p 8.

⁹⁴ [2021] HCA 27, 273 CLR 346; Queensland Parliament, Record of Proceedings, 14 October 2025, p 3002.

⁹⁵ Queensland Parliament, Record of Proceedings, 14 October 2025, p 3002.

⁹⁶ Statement of compatibility, p 8.

⁹⁷ Queensland Parliament, Record of Proceedings, 14 October 2025, p 3002.

⁹⁸ Statement of compatibility, p 8.

retains the right to keep the content and instead defend the publication as a potential publisher in any resulting defamation proceedings.⁹⁹

Right to a fair hearing and rights in criminal proceedings

The proposed defence for digital intermediaries may also limit their right to a fair hearing and rights in criminal proceedings. This is because the digital intermediary would have the burden of adducing evidence to demonstrate that they meet the criteria for establishing the defence as a lawful excuse for criminal defamation (i.e. it reverses the evidential onus of proof).

The purpose of these amendments is to ensure that criminal liability is not unjustly imposed through the lack of availability of the new defence.¹⁰⁰ The amendment is also intended to provide consistency in civil and criminal proceedings for defamation.¹⁰¹ While the digital intermediary would have the burden of adducing evidence, it is evidence that is likely to be uniquely in their knowledge.¹⁰²

Orders against non-party digital intermediaries

Freedom of expression

The Bill provides the court with power to order a digital intermediary (who is not a party to defamation proceedings) to take steps necessary to prevent or limit the continued publication (or republication) of digital matter to comply with a judgment for defamation, a temporary injunction or other temporary order, or a final injunction or order.¹⁰³

This may limit the freedom of expression as it would restrict the ability of persons to access or view the content in question, including potentially in circumstances where the plaintiff has not yet obtained a final judgement against the defendant. This may impact on the free flow of information and ideas between people.¹⁰⁴

The purpose of this amendment is to promote the right to privacy and reputation, by providing the court with the power to require a digital intermediary to take steps to assist a complainant (for example, by blocking access to the content) in circumstances where the original publisher does not comply with the court's order or judgment.¹⁰⁵ There is a rational connection between the limitation and its purpose and the amendments are only doing what is necessary to achieve the purpose. The Bill provides that in most circumstances, the court may not make an order against the digital intermediary unless they have been given an opportunity to be heard regarding the appropriateness of the order.¹⁰⁶

⁹⁹ Queensland Parliament, Record of Proceedings, 14 October 2025, p 3002.

¹⁰⁰ Statement of compatibility, p 8.

¹⁰¹ Queensland Parliament, Record of Proceedings, 14 October 2025, p 3003.

¹⁰² Statement of compatibility, p 8.

¹⁰³ Bill, cl 10 (Defamation Act, new s 39A); statement of compatibility, p 10.

¹⁰⁴ Statement of compatibility, p 10.

¹⁰⁵ Statement of compatibility, p 11.

¹⁰⁶ Bill, cl 10 (Defamation Act, new s 39A(4),(5)). The only exception is where it is necessary to make a temporary order expeditiously pending a subsequent hearing.

Extension of absolute privilege defence

The Defamation Act currently provides that it is a defence to the publication of defamatory matter if the defendant proves that it was published on an occasion of absolute privilege.¹⁰⁷ These occasions include if the matter is published in the course of proceedings of a parliamentary body or an Australian court or tribunal.¹⁰⁸

The Bill extends the defence of absolute privilege to publications of defamatory matter to a person who, at the time of publication, is an official of a police force or service of an Australian jurisdiction and it is published to the official while acting in an official capacity.¹⁰⁹ This may limit the right to privacy and reputation as it would create an indefeasible defence to a defamation claim.¹¹⁰ This would include, according to the statement of compatibility, circumstances where the defendant was actuated by malice.¹¹¹

The purpose of this amendment is to address the ‘chilling effect’ or threat that potential defamation proceedings can have to deter some people from making complaints to police services.¹¹² While it is difficult to establish whether the limitation will achieve this purpose, the statement of compatibility notes there is anecdotal evidence to suggest that a defence of absolute privilege will reduce the barrier to reporting that some people experience.¹¹³ It is noted that anecdotal evidence from other international jurisdictions with similar provisions (such as the United Kingdom) indicates that the availability of the defence has not resulted in an increase in false reporting.¹¹⁴

While a less restrictive approach could be to apply the defence of absolute privilege to a narrow set of circumstances (rather than all publications to police), the statement of compatibility notes this would not be as effective in addressing the chilling effect.¹¹⁵ Further, retaining the status quo (being the defence of qualified privilege) is not considered effective because the onus rests on the person making the statement to establish the defence rather than it attaching to the circumstances of disclosure.¹¹⁶

According to the statement of compatibility, the offence of providing a false declaration under the Criminal Code¹¹⁷ should act as a safeguard against false reporting.

¹⁰⁷ Defamation Act, s 27(1). Absolute privilege operates as a defence that is indefeasible once established. Statement of compatibility, p 11.

¹⁰⁸ Defamation Act, s 27(2).

¹⁰⁹ Bill, cl 8 (Defamation Act, new s 27(2)(ba)). Currently only the defence of qualified privilege applies in these circumstances.

¹¹⁰ Statement of compatibility, p 12.

¹¹¹ Statement of compatibility, p 12.

¹¹² Statement of compatibility, p 12.

¹¹³ Statement of compatibility, p 12.

¹¹⁴ Statement of compatibility, p 12.

¹¹⁵ Statement of compatibility, p 13.

¹¹⁶ Queensland Parliament, Record of Proceedings, 14 October 2025, p 3004.

¹¹⁷ Criminal Code, s 194. The maximum penalty is 3 years imprisonment.

Committee comment

The committee acknowledges the amendments may limit freedom of expression, particularly when potentially defamatory content has yet to be tested. However, the committee considers the purpose of the limitation, namely to ensure the privacy and reputation of individuals is not restricted or harmed, outweighs this limitation such that the Bill is compatible with human rights. The committee supports the consistent management of defamation proceedings before criminal and civil courts, and the extension of the defence of absolute privilege to counter the ‘chilling effect’ that can deter people from making complaints to police. The committee is encouraged by the experience of other jurisdictions which indicates that the defence of absolute privilege has not resulted in an increase of false or malicious reporting.

Appendix A – Submitters

<i>Sub No.</i>	<i>Name / Organisation</i>
1	Crime and Corruption Commission
2	North Queensland Women's Legal Service
3	Local Government Association of Queensland
4	Office of the Victims' Commissioner
5	Bar Association of Queensland

Appendix B – Public Briefing, 10 November 2025

Department of Justice	
Greg Bourke	Acting Assistant Director-General, Department of Justice
Leighton Kraa	Director, Department of Justice
Joanna Eisemann	Principal Legal Officer, Department of Justice