

# Defamation (Model Provisions) and Other Legislation Amendment Bill 2021

## Explanatory Notes

### Short title

Defamation (Model Provisions) and Other Legislation Amendment Bill 2021

### Policy objectives and the reasons for them

In November 2004, the Attorneys-General of the States and Territories agreed to support the enactment in their respective jurisdictions of uniform model provisions in relation to the law of defamation called the Model Defamation Provisions (MDPs). The MDPs were subsequently enacted. In Queensland, the MDPs were enacted in the *Defamation Act 2005* (Defamation Act).

Each State and Territory is a party to the Model Defamation Provisions Intergovernmental Agreement. The Agreement establishes the Model Defamation Law Working Party (DWP). The functions of the DWP include reporting to the Council of Attorneys-General (Council) on proposals to amend the MDPs.

In 2018, the Council reconvened the DWP to review the MDPs. The review, led by New South Wales, was conducted in 2019 and 2020.

The DWP recommended to the Council that certain amendments prepared by the Australasian Parliamentary Counsel's Committee be made to the MDPs. The Council agreed in July 2020 to support the enactment of the Model Defamation Amendment Provisions 2020 (MDAPs) by each State and Territory.

The principal object of this Bill is to amend the Defamation Act and the *Limitation of Actions Act 1974* to implement the MDAPs.

Also, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* (HV Amendment Act) made a range of amendments to the *Heavy Vehicle National Law Act 2012* (HVNL Act) that addressed a number of operational, minor and technical drafting issues that will improve roadside enforcement, reduce the compliance burden for industry and reduce the administrative burden for the National Heavy Vehicle Regulator (NHVR).

The HV Amendment Act was assented to on 26 September 2019. To facilitate the effective implementation of the amendments and to provide a common commencement date in all HVNL Act participating jurisdictions, part 3 of the HV Amendment Act was proclaimed on 28 February 2020, other than sections 10 and 11, which are due to commence on 27 September 2021.

Sections 10 and 11 of the HV Amendment Act amend sections 96 (Compliance with mass requirements) and 102 (Compliance with dimension requirements) of the HVNL Act, respectively. The intended effect of sections 10 and 11 is that a Performance Based Standards (PBS) vehicle detected operating off-route will lose its PBS Vehicle Approval mass and dimension limits. The prescribed mass and dimension limits under the Heavy Vehicle (Mass, Dimension and Loading) National Regulation (MDL

Regulation) will apply to the vehicle instead of the PBS Vehicle Approval mass and dimension limits.

Currently, PBS mass and dimension limits apply to PBS vehicles detected operating off-route, which means that it can only be breached for being off-route (section 137) not for being over mass (section 96) or over dimension (section 102). The penalty for being off-route is considerably lower than for being over mass or over dimension.

The rationale for amending sections 96 and 102 of the HVNL Act was to better align the enforcement outcomes and penalties for off-route PBS vehicles with off-route Class 1 and 3 vehicles.

However, commencement of sections 10 and 11 will cause unintended and inconsistent mass and dimension enforcement outcomes for PBS vehicles detected off-route compared to other Class 2 vehicles and when compared to Class 1 and Class 3 vehicles. This may include the initiation of court proceedings instead of the issue of a penalty infringement notice, or the use of additional enforcement powers such as a direction not to move the vehicle until the breach has been rectified or to move it to a safe location.

The unintended consequences and issues identified are not solely the result of sections 10 and 11, but have exacerbated existing anomalies and inconsistencies within the current HVNL Act. This is mainly due to the way PBS vehicles are dealt with in the HVNL Act and MDL Regulation compared to Class 1 and 3 vehicles and other Class 2 vehicles.

PBS vehicles have unique designs that do not necessarily correspond to defined vehicle types under the MDL Regulation but deliver better performance and safety outcomes. The 'reversion' to prescribed mass and dimension limits under sections 10 and 11 will unfairly penalise PBS vehicles compared with traditional vehicles that do not perform as well as the PBS vehicle.

The NHVR has confirmed that there is no apparent operational solution to these unintended outcomes. Accordingly, it is proposed to repeal sections 10 and 11 of the HV Amendment Act and the issues addressed through these provisions will instead be resolved as part of the Heavy Vehicle National Law Review.

## **Achievement of policy objectives**

The aims of the MDAPs, included in the Bill, are, as follows:

- to provide for serious harm to be an element of the cause of action for defamation (coupled with the abolition of the defence of triviality) - a statement will not be defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the plaintiff, with the onus on the plaintiff to establish serious harm and, if the plaintiff is a corporation, that serious financial loss has been caused or is likely to be caused by the publication;
- to require that, if raised by a party, a judicial officer is generally to determine whether the serious harm element is established as soon as practicable before the trial of defamation proceedings so as to deal with insignificant claims early in the proceedings;
- to provide for certain individuals to be counted as employees of a corporation for the purpose of determining whether the corporation can sue for defamation;
- to require a concerns notice to be given to the publisher of matter that is or may be defamatory before defamation proceedings may be commenced against the publisher in respect of the matter;

- to make various amendments with respect to the form, content and timing for concerns notices and offers to make amends;
- to clarify that a defendant may plead back imputations relied on by the plaintiff as well as those relied on by the defendant to establish the defence of contextual truth;
- to provide for a defence for the publication of defamatory matter concerning an issue of public interest:
  - where the defendant can prove that the statement complained of was, or formed part of, a statement on a matter of public interest and reasonably believed that publishing the statement was in the public interest; and
  - with a non-exhaustive list of factors the court may take into account when considering the defence and with consequential amendments to the existing defence of qualified privilege to avoid overlap;
- to provide for a defence in respect of peer-reviewed matters published in academic or scientific journals;
- to clarify when material is sufficiently identified in a publication of defamatory matter for it to be treated as proper material on which to base the defence of honest opinion;
- to make it clear that the maximum amount of damages for non-economic loss specified by the MDPs operates to create a scale or range of damages rather than a cap;
- to require the leave of the court to commence defamation proceedings against certain associates of a defendant previously sued for defamation in respect of the publication of the same matter;
- to provide that an election to have defamation proceedings tried by jury can be revoked only with the consent of all the parties or with the leave of the court on the application of a party;
- to allow a court to determine costs in respect of defamation proceedings that end because of the death of a party if it is in the interests of justice to do so;
- to introduce a single publication rule concerning the limitation period for multiple publications of the same defamatory matter by the same publisher or an associate of the publisher so that —
  - the start date of the 1-year limitation period for each publication runs from the date of the first publication, and
  - for an electronic publication, the start date runs from when it is uploaded for access or sent to the recipient rather than when it is downloaded or received;
- to provide for the limitation period for commencing defamation proceedings to be extended to enable pre-trial processes to be concluded and to provide courts with greater flexibility to extend the limitation period;
- to allow notices and other documents to be sent to an email address specified by the recipient for the giving or service of documents; and
- to make certain other consequential or related amendments.

In relation to heavy vehicles, the policy objective will be achieved by repealing sections 10 and 11 of the HV Amendment Act.

### **Alternative ways of achieving policy objectives**

In relation to defamation, there are no alternative ways to achieve the policy objectives.

The HV Amendment Act amended existing provisions of the HVNL to maintain currency and further enhance clarity and operability.

In endorsing these national heavy vehicle reform policy initiatives, the former Transport and Infrastructure Council considered how effective implementation of the policy initiatives could be best achieved and the potential advantages of legislative change over implementation through other administrative options.

Reducing complexity and improving the effectiveness of the HVNL can only be achieved through legislative amendment. Further, protecting public safety and managing risks to infrastructure caused by PBS vehicles travelling on non-PBS routes, could only be achieved through legislative amendment to ensure that relevant mass and dimension breach penalties and other remedies apply.

## **Estimated cost for government implementation**

Amendments to streamline the pre-litigation process (by generally requiring plaintiffs to issue a concerns notice prior to commencing litigation and clarifying the offer to make amends process), as well as the introduction of the serious harm threshold test, are intended to have a positive impact on Queensland courts. Despite this, these amendments are unlikely to result in resource or cost savings for Queensland courts given the small number of defamation matters that are filed, and the even smaller number that proceed to hearing, in Queensland.

There are no costs associated with repealing sections 10 and 11 of the HV Amendment Act. Indeed, any unintended and inconsistent mass and dimension enforcement outcomes for PBS vehicles detected off-route will be avoided.

Jurisdictions will also benefit from the additional time provided to develop and implement a legislative strategy to resolve the issue.

## **Consistency with Fundamental Legislative Principles**

The fundamental legislative principles require legislation to have sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992* (LSA)).

Defamation laws give rise to two competing rights – the right of individuals to free speech and the right of individuals to the protection of their reputations. John Fleming’s *The Law of Torts* states that “*both interests are highly valued in our society, one as perhaps the most dearly prized attribution of civilised man, the other the very foundation of a democratic society*”. One of the aims of the MDAPs is to strike the right balance between protecting individual reputations and ensuring that the law of defamation does not place unreasonable limits on freedom of expression.

The following two amendments also impact on the rights and liberties of individuals (section 4(2)(a) of the LSA):

- New section 12B, will require plaintiffs to give defendants a concerns notice and wait 14 days from the date of service before commencing legal proceedings. This will impact upon a plaintiff’s ability to proceed straight to hearing, particularly in urgent cases. Despite new section 12B, a plaintiff will be able to apply to the court to waive this requirement where the court is satisfied it is just and reasonable to do so. This change will facilitate the greater use of the pre-

litigation process in the hope that parties may settle their disputes without the need to proceed to court. This is beneficial to the parties as well as the court and the public as a whole by freeing up court time and resources for other legal matters.

- Amendments to section 21 provide that a party's election as to whether a judge or jury should be the decision maker in the trial will be irrevocable except with the consent of all the parties to the proceedings or in the case of disagreement, with leave of the court. The court can only grant leave if satisfied it is in the interests of justice for the election to be revoked. Placing limitations on the person's right to elect the arbiter of proceedings could potentially impede upon their rights, however, the provisions are aimed at ensuring a party cannot unilaterally make decisions for their own benefit and contain sufficient latitude for the court to grant leave to change arrangements in appropriate circumstances.

The heavy vehicle amendments have been drafted with regard to fundamental legislative principles as defined in section 4 of the LSA and are consistent with these principles.

## **Consultation**

In reviewing the MDPs, the DWP undertook an extensive public consultation process over a two year period which included the public release of a discussion paper, background paper and draft amendments for comment, four stakeholder roundtables and the engagement of an expert panel comprised of judges, academics, defamation practitioners and the NSW Solicitor-General.

The heads of jurisdiction and legal stakeholders in Queensland were consulted during the DWP's consultation process. Additionally, information about the DWP's consultation processes was uploaded onto the Department of Justice and Attorney-General's community consultation page.

The heavy vehicle amendments were developed by the National Transport Commission and the Regulator in consultation with state and territory government transport and enforcement agencies. Consultation was also undertaken with peak transport industry organisations and other key stakeholder representatives.

While Western Australia and the Northern Territory are not participating jurisdictions at this time, they have been consulted on the development of these amendments.

Stakeholders have indicated support for these amendments.

## **Consistency with legislation of other jurisdictions**

The Bill is uniform with the MDAPs agreed to by the Council in July 2020. When approving the MDAPs, Attorneys-General agreed to enact and commence the amendment to the MDAPs as soon as possible. Currently, NSW, Victoria and South Australia have passed the MDAPs and intend to commence them on 1 July 2021.

The Bill will ensure that the consistent and equitable regulation of the heavy vehicle industry is maintained across participating jurisdictions.

## NOTES ON PROVISIONS

### Part 1 - Preliminary

*Clause 1* provides that the Act may be cited as the *Defamation (Model Provisions) and Other Legislation Amendment Act 2021*.

*Clause 2* provides that the Act, other than part 3 (Amendments to *Heavy Vehicle National Law and Other Legislation Amendment Act 2019*), will commence on 1 July 2021.

### Part 2 - Amendment of Defamation Act 2005

*Clause 3* provides that this part amends the *Defamation Act 2005*.

*Clause 4* replaces subsection (2)(b) of section 9 (Certain corporations do not have a cause of action for defamation) as well as omitting subsection (4) to clarify and restrict the types of corporations that can sue for defamation. The changes will result in corporations that are associated entities of other corporations, within the meaning of section 50AAA of the *Corporations Act 2001* (Cth), having no cause of action in defamation. Currently, this exclusion is limited to a corporation that is related to the other corporation.

Subclause (3) inserts into section 9(6) a definition of ‘employee’, a term not currently defined, to include any individual (whether or not an independent contractor) who is engaged in the day to day operations of the corporation other than as a volunteer and is subject to the control and direction of the corporation. As a result of these amendments, corporations cannot structure their businesses to avoid the general prohibition of corporations suing for defamation.

*Clause 5* inserts a new subsection (2) into section 10 (No cause of action for defamation of, or against, deceased persons) to provide that, if a court considers it in the interests of justice to do so, the court may determine the question of costs in defamation proceedings if they end because of the death of a party.

*Clause 6* inserts a new section 10A (Serious harm element of cause of action for defamation) into the Act which provides that serious harm is an element of the cause of action for defamation, consistent with the approach taken in the *Defamation Act 2013* (UK). Under this section, the plaintiff will be required to prove the publication of the defamatory matter has caused, or is likely to cause, serious harm to the reputation of the plaintiff. Subsection (2) provides that, for an excluded corporation, harm is not serious harm unless it has caused, or is likely to cause, the corporation serious financial loss.

Section 10A sets out a procedure for determining whether the serious harm element is established including:

- the judicial officer is to determine whether the element is established rather than the jury (if there is one),

- whether the element is established can be determined either before trial or during the trial of defamation proceedings on the judicial officer's own motion or on the application of a party,
- 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).

The purpose of the new section is to encourage the early resolution of defamation proceedings by enabling the issue of serious harm to be dealt with as a threshold issue. As a result, the defence of triviality, which currently requires a defendant to prove the harm caused by defamation matter was trivial, will be removed from the Act (see clause 20).

*Clause 7* changes the heading of part 3, division 1 from 'Offers to make amends' to 'Concerns notices and offers to make amends'.

Part 3 contains provisions to encourage the resolution of civil disputes about the publication of potentially defamatory matter without litigation. Clauses 8 to 11 of the Bill are intended to clarify and refine these procedures to better facilitate resolution of defamation disputes without litigation.

*Clause 8* inserts new sections 12A (Concerns notices) and 12B (Defamation proceedings can not be commenced without concerns notice) into part 3 of the Act.

New section 12A outlines when a notice is a concerns notice for the purposes of defamation proceedings. A concerns notice must inform the publisher in writing, of the location where the publication can be accessed, the defamatory imputations alleged, and the serious harm that has been caused or is likely to be caused to the person's reputation (or in the case of an excluded corporation, the serious financial loss caused, or likely to be caused).

New section 12A also outlines the process for a further particulars notice that can be issued by a publisher in response to a concerns notice that fails to adequately specify the required information.

New section 12B provides that defamation proceedings cannot be commenced without a concerns notice that particularises the defamatory imputations alleged being given to the proposed defendant and the period in which the defendant can make an offer of amends has elapsed.

Under new section 12B, the court may grant leave for proceedings to be commenced despite non-compliance with the precondition for a concerns notice if the plaintiff satisfies the court that (a) the commencement of proceedings after the end of the applicable period for an offer to make amends contravenes the limitation law, or (b) it is just and reasonable to grant leave.

*Clause 9* amends section 14 (When offer to make amends may be made) to provide for the ‘applicable period’ that is open for the publisher to make an offer to make amends. The applicable period is 14 days since the publisher was given further particulars in response to a further particulars notice if 14 days have already elapsed since the concerns notice was given; or in any other case, 28 days since the publisher was given a concerns notice.

*Clause 10* makes various amendments to section 15 (Content of offer to make amends) including amending subsection (1) to require an offer to make amends to be open for at least 28 days commencing on the day the offer is made and inserting a new subsection (1A) to outline additional matters an offer to make amends may include, such as an offer to publish an apology or remove the published matter from a website or location.

*Clause 11* amends section 18 (Effect of failure to accept reasonable offer to make amends) which provides a publisher with a defence in defamation proceedings if the aggrieved person fails to accept a reasonable offer to make amends. The defence has two preconditions in addition to reasonableness.

This clause amends the first pre-condition in subsection (1)(a) to provide that the offer must be made as soon as reasonably practicable after the publisher was given a concerns notice in respect of the matter (and, in any event, within the applicable period for an offer to make amends). Further, the clause alters the second precondition in subsection (1)(b) so that the defence can be relied on if the publisher was ready and willing, on acceptance of the offer, to carry out the terms of the offer.

Further, the clause inserts a new subsection (3) to provide that the judicial officer, not the jury, determines whether the defence is established.

*Clause 12* amends section 21 (Election for defamation proceedings to be tried by jury) of the Act. This section currently enables a party to defamation proceedings to elect to have a jury trial.

This clause inserts a new subsection (1A) which provides that a court may order that defamation proceedings are not to be tried by jury if the trial requires a prolonged examination of records, or involves any technical, scientific or other issue that cannot be conveniently considered and resolved by a jury.

The clause also omits current subsection (3) and inserts new subsections (3) and (3A) which will allow an election for a jury trial to be revoked if both parties consent, or if both parties do not consent, the court grants leave if it is satisfied it is in the interests of justice. The intention is to enable the court to allow an election to be revoked if the parties cannot agree and the circumstances of the case are such that it is in the interests of justice to allow the revocation. New subsection (3A) and existing subsection (4) are then renumbered as subsections (4) and (5).

*Clause 13* amends section 22 (Roles of judicial officers and juries in defamation proceedings) to insert an additional paragraph (c) into subsection (5) to clarify that the section does not require or permit the jury to determine any issue that a judicial officer is required to determine under the Act.

*Clause 14* replaces section 23 (Leave required for multiple proceedings in relation to publication of same defamatory matter). Currently, section 23 does not prevent a person bringing defamation proceedings for damages against persons who were closely associated with a previously sued defendant at the time of the publication, for example, employees or contractors of the previous defendant. This can result in multiple defamation proceedings in respect of the same matter. This clause recasts section 23 to address this issue by requiring the leave of the court to bring defamation proceedings against associates of the previous defendant. An associate of a previous defendant is defined in subsection (3).

*Clause 15* replaces section 26 (Defence of contextual truth) to clarify that a defendant may plead back substantially true imputations relied on by the plaintiff, as well as those they are relying on, to establish the defence of contextual truth. The intention of this clause is to address uncertainty about the operation of the contextual truth defence.

*Clause 16* inserts new section 29A (Defence of publication of matter concerning issue of public interest) to establish a new defence which applies to the publication of a matter in the public interest. The new defence is comparable to the defence in section 4 of the *Defamation Act 2013* (UK).

In order to establish the defence, the jury must be satisfied that the matter concerns an issue of public interest and the defendant reasonably believed that the publication was in the public interest. A court must take into account all of the circumstances of the case, and although subsection (3) lists factors that the court may consider, these factors are not intended to operate as a checklist, or a limit on the matters that may be considered by the court. The factors are merely intended to provide non-exhaustive guidance to the court.

One of the objects of the model provisions is to ensure that the law of defamation does not place unreasonable limits on freedom of expression and, in particular, on the publication and discussion of matters of public interest and importance. It is anticipated that the new defence will promote this object.

*Clause 17* amends section 30 (Defence of qualified privilege for provision of certain information) to recast the factors that may be taken into account in determining whether this defence is established so as to minimise duplication with the factors for the new public interest defence.

The clause also inserts a new subsection (3A) which clarifies that the factors listed in subsection (3) are not intended to operate as a checklist. As for the new public interest defence, the factors are intended to provide non-exhaustive guidance to the court.

New subsection (3B) clarifies that it is not necessary to prove that the matter published concerned an issue of public interest to establish the defence of qualified privilege. The intention is to minimise overlap with the public interest defence.

Further, the clause also inserts a new subsection (6) which clarifies that the jury (in proceedings tried by a jury), not the judicial officer, determines whether the qualified privilege defence has been satisfied.

*Clause 18* inserts new section 30A (Defence of scientific or academic peer review) into the Act to create a new defence. To establish this defence, the defamatory matter must have been published in a scientific or academic journal, relate to a scientific or academic issue and have been subject to independent review of the scientific or academic merit. The defence extends to any peer reviewed assessment of the matter and to a fair summary of, or fair extract from, a matter or assessment to which a defence applies under the section. The defence, which is comparable to section 6 of the *Defamation Act 2013* (UK), is intended to recognise that it is in the public interest for academics and scientists to be able to express their views freely, particularly if they have been subject to peer review.

*Clause 19* amends section 31 (Defences of honest opinion) to insert a new subsection (5). This new subsection will address uncertainty about how material relied on needs to be referred to in a publication in order for the opinion to be based on proper material, particularly if the material is in electronic form or is common knowledge.

*Clause 20* omits section 33 (Defence of triviality) given the introduction of the serious harm threshold, which places the onus on the plaintiff to prove serious harm in order to bring a successful action for defamation.

*Clause 21* amends section 35 (Damages for non-economic loss limited) to clarify that the cap on damages for non-economic loss sets the upper limit on a scale or range of damages and applies regardless of whether aggravated damages apply. The clause also inserts new subsection (2) which provides that the maximum damages amount is to be awarded only in a most serious case. New subsection (2A) provides that subsection (1) does not limit the court's power to award aggravated damages if an award of aggravated damages is warranted in the circumstances. New subsection (2B) provides that awards of aggravated damages are to be made separately to awards of damages for non-economic loss to ensure the scale or range for damages for non-economic loss continues to apply for non-economic loss even if aggravated damages are awarded.

*Clause 22* amends section 44 (Giving of notices and other documents) to allow notices and other documents to be sent to an email address specified by the recipient for the giving or service of documents.

*Clause 23* amends the heading of section 49 (Savings, transitional and other provisions) to clarify that the transitional provision relates to when the Act was originally enacted in 2005.

*Clause 24* inserts a new section 50 (Transitional provision for Defamation (Model Provisions) and Other Legislation Amendment Act 2021) to provide that an amendment to the Act by the *Defamation (Model Provisions) and Other Legislation Amendment Act 2021* applies to the publication of defamatory matter after the commencement of the amendment.

*Clause 25* inserts definitions of the following terms into Schedule 5 (Dictionary) to support amendments relating to offers to make amends, concerns notices and the

ability of corporations to sue for defamation – ‘*applicable period*’; ‘*associated entity*’; ‘*concerns notice*’; ‘*excluded corporation*’ and ‘*further particulars notice*’.

### **Part 3 – Amendment of Heavy Vehicle National Law and Other Legislation Amendment Act 2019**

*Clause 26* provides that this part amends the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019*.

*Clause 27* omits section 10 (Amendment of section 96 (Compliance with mass requirements)) and section 11 (Amendment of section 102 (Compliance with dimension requirements)) of the Act. These omissions will remove these provisions before they commence, leaving sections 96 and 102 of the Schedule to the *Heavy Vehicle National Law Act 2012* unchanged.

### **Part 4 – Amendment of *Limitation of Actions Act 1974***

*Clause 28* provides that this part amends the *Limitation of Actions Act 1974*.

*Clause 29* amends section 10AA (Defamation actions), to insert new subsections (2) to (4), which enable the 1-year limitation period to be extended for an additional period of 56 days minus the number of days remaining in the limitation period, from the day the concerns notice is given to the proposed defendant. The additional period is intended to allow the proposed defendant time to consider the concerns notice and the aggrieved person to consider any offer to make amends.

*Clause 30* inserts a new section 10AB (Defamation actions – single publication rule) to implement a single publication rule.

At general law, each publication of defamatory matter is a separate cause of action and for internet publications, occurs when a third party downloads a webpage rather than when it is posted online by the publisher. As webpages may be downloaded many thousands of times, this means that there is a separate cause of action for each download and the limitation period applicable to each download will vary even though the same matter is involved. This may enable plaintiffs to circumvent the purpose behind the general 1-year limitation period by relying on later downloads of the same matter.

The introduction of a "single publication rule" is intended to address this problem.

The effect of the introduction of a single publication rule, is that the date of the first publication of defamatory matter (defined as the day the matter was first uploaded for access or sent electronically to a recipient) will be treated as the start date for the limitation period for all publications of the same matter, except if the manner of a subsequent publication is materially different from the first publication.

*Clause 31* replaces subsections (2) and (3) of section 32A (Defamation actions) to allow the extension of the limitation period to a period of up to 3 years from the date of the alleged publication if the plaintiff satisfies the court that it is just and reasonable to allow the action to proceed.

*Clause 32* inserts a new section 41A (Defamation actions – effect of limitation law concerning electronic publications on other laws). This new section provides that the commencement of the limitation period in relation to electronic publications is to be determined by reference to when the publisher uploads it for access or sends it electronically rather than by reference to when it is downloaded or received.

*Clause 33* inserts a new section 50 (Transitional provision for Defamation (Model Provisions) and Other Legislation Amendment Act 2021) which provides that the amendments to sections 10AA and section 32A made by, and section 10AB as inserted by, the *Defamation (Model Provisions) and Other Legislation Amendment Act 2021* apply only in relation to the publication of defamatory matter after the commencement of the provisions. Subsection (3) provides that section 10AB extends to a first publication before the commencement of the section, but only in respect of subsequent publications after the commencement.