

Defamation and Other Legislation Amendment Bill 2025

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Deb Frecklington, Attorney-General and Minister for Justice and Minister for Integrity make this statement of compatibility with respect to the Defamation and Other Legislation Amendment Bill 2025.

In my opinion, the Defamation and Other Legislation Amendment Bill 2025 is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

In June 2018, the then Council of Attorneys-General (CAG) agreed to reconvene the Defamation Working Party (DWP), led by New South Wales (NSW) and comprising representatives of all Australian jurisdictions, to review the Model Defamation Provisions (MDPs).

The Stage 2 review commenced in 2021 and comprised of the following two parts:

- Part A, led by NSW, focused on the question of internet intermediary liability for defamation for the publication of third-party content; and
- Part B, led by Victoria, focused on whether the defence of absolute privilege should be extended to cover reports to police and some other complaints handling bodies.

At the conclusion of the Stage 2 review, a majority of the Standing Council of Attorneys-General agreed to the *Model Defamation Amendment (Digital Intermediary) Provisions 2023* (Part A MDAPs) and the *Model Defamation Amendment (Absolute Privilege) Provisions 2023* (Part B MDAPs).

The Bill will amend the *Defamation Act 2005* (the Act) to implement the Part A MDAPs and Part B MDAPs in Queensland to:

- exempt a digital intermediary from liability for defamation for the publication of digital matter if—
 - the intermediary's role in the publication of the matter is limited to providing a caching service, conduit service or storage service and so long as the intermediary did not take an active role in the publication, for example, by initiating, promoting or editing the matter, or
 - the intermediary is a search engine provider whose role in the publication of the matter is limited to providing an automated process for users to generate search results identifying or linking to a webpage on which the matter is located;
- provide 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;

- allow for an offer to make amends in relation to the publication of defamatory digital matter to include an offer to take steps to remove or prevent access to the matter;
- confirm courts must take certain matters into account when making an order for, or in the nature of, preliminary discovery for information about the identity or address of posters of defamatory digital matter;
- enable courts to make orders against digital intermediaries who are not parties to certain defamation proceedings to require them to take steps to remove or prevent access to defamatory digital matter;
- extend the defence of absolute privilege to publications of defamatory matter to officials of Australian police forces or services while they are acting in their official capacities;
- allow notices and other documents to be given or served under the Act by means of email, messaging or other electronic communication to an electronic address or location indicated by the recipient;
- provide for savings and transitional matters for the amendments; and
- make certain other consequential, related or minor amendments.

The Bill also includes amendments to the criminal defamation offence under section 365 of the Criminal Code to ensure that an accused person who may access the new defence or statutory exemption for defamation in civil proceedings as a result of the Stage 2, Part B amendments has a lawful excuse for criminal defamation.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)

In relation to the amendments proposed for inclusion in the Bill, the following human rights are relevant:

- freedom of expression (section 21 of the HR Act);
- privacy and reputation (section 25 of the HR Act);
- fair hearing (section 31 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

The **right to freedom of expression** protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication). The forms of protected expression are broad, and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of democratic society.

Defamation law is inherently a restriction on the right to freedom of expression. A central concern with defamation laws is whether the measures therein have a ‘chilling effect’ on the reporting of matters for which there is legitimate public interest. A chilling effect may arise, in the words of the ECHR Court, where a person engages in self-censorship, due to a fear of disproportionate sanctions or a fear of prosecution under overbroad laws. This chilling effect works to the detriment of society as a whole.

The **right to privacy and reputation** protects the individual from all interferences and attacks upon their privacy, family, home correspondence (written and verbal) and reputation. The right to privacy is very broad and protects privacy in the sense of personal information, data

collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation.

This right is limited by an internal limitation: a person has the right not to have their privacy, family, home, or correspondence unlawfully and arbitrarily interfered with. Case law has defined arbitrariness in a human rights context case as conduct that is capricious, unpredictable or unjust; and interferes with rights that are unreasonable (in the sense of not being proportionate to the aim).

The right to **fair hearing** affirms the right of individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and includes giving each party a reasonable opportunity to present its case. Mere inconvenience is not enough to show that the right to a fair hearing has been limited. What constitutes a 'fair' hearing will depend on the facts of the case and will require the weighing of a number of public interest factors including the rights of all parties (in civil proceedings).

Rights in criminal proceedings include that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law under section 32(1) of the HR Act. This imposes on the prosecution the onus of proving the offence, guarantees that guilt cannot be determined until the offence has been proved beyond reasonable doubt, gives the accused the benefit of the doubt, and requires that accused persons be treated in accordance with this principle. However, sometimes there will be a departure from this general rule involving the imposition of either an evidential or legal burden of proof on the accused person or a reversal of the onus of proof. Where a statutory exemption, defence or excuse to an offence is provided, this exemption, defence or excuse must be considered as part of a contextual and substantive assessment of potential limitations on the right to be presumed innocent.

Amendments promoting human rights

Offers to make amends in relation to the publication of defamatory digital matter

Part 3 of the Act includes provisions which encourage the resolution of civil disputes about potentially defamatory matters without litigation. In certain circumstances, a publisher may make an offer to make amends in the form provided by the provisions. If accepted by an aggrieved person, that person cannot assert, continue or enforce an action for defamation against the publisher in relation to the matter in question if the publisher carries out the terms of an offer. Also, the publisher will have a defence in defamation proceedings for that matter if the aggrieved person refuses to accept a reasonable offer to make amends made in compliance with certain requirements.

The amendments broaden an offer to make amends to include an offer to take access prevention steps, which may involve removing the matter or instead blocking, disabling or otherwise preventing access to the matter. This is aimed at providing greater flexibility for publishers in dealing with complaints about the publication of defamatory digital matter.

This promotes the right to privacy and reputation by increasing opportunities to minimise access to defamatory digital matter that may harm another person's reputation, in particular

in circumstances where it is not possible or meaningful to publish a correction or provide clarification.

Allowing notices and other documents to be given or served by electronic communication

The Bill will enable any form of electronic communication, including, without limitation, emails and messaging, to be used to give or serve documents if the recipient indicates an electronic address or location for giving or serving documents.

This promotes the right to privacy and reputation by making it easier for an aggrieved person to provide a concerns notice requesting that a publisher take certain actions about alleged defamatory matter, which could in turn facilitate earlier service of documents and may lead to the publisher taking earlier steps to remove defamatory matter or take other action to redress harm sustained.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

Exempting a digital intermediary from liability for defamation for the publication of digital matter in certain circumstances

(a) the nature of the right

The Bill will include amendments to provide for two conditional statutory exemptions from liability for defamation targeting narrow classes of digital intermediaries. The exemptions will apply if:

- the intermediary's role in the publication of the matter is limited to providing a caching service, conduit service or storage service and so long as the intermediary did not take an active role in the publication, for example, by initiating, promoting or editing the matter, or
- the intermediary is a search engine provider whose role in the publication of the matter is limited to providing an automated process for users to generate search results identifying or linking to a webpage on which the matter is located.

The Bill also amends the Criminal Code to ensure that the statutory exemptions from liability operate as a lawful excuse in criminal defamation proceedings.

The nature of the rights to privacy and reputation and rights in criminal proceedings are set out under the heading 'Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)' above.

These amendments will limit the right to privacy and reputation as the new statutory exemptions will continue to enable digital defamatory matter to be stored or accessed on a digital intermediary's service even if the digital intermediary knows, or ought to have known that the matter was defamatory without civil liability if the relevant statutory exemption is proven, and without criminal liability if evidence directed at establishing the offence is adduced by an accused person and not negated by the prosecution.

The amendments will limit rights in criminal proceedings because it is necessary for a person accused of criminal defamation to adduce evidence if they wish to establish a lawful excuse in the form the statutory exemption, which the prosecution has the burden of negating. This limits the presumption of innocence by placing an evidential burden on the accused person if they wish to rely on a lawful defence.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

One purpose of the limitations is to ensure that the precise scope of the liability of digital intermediaries both civilly and criminally is clear, and enable arguments about civil liability for defamation to be resolved, if possible, at an early stage of proceedings, without the need to determine whether the digital intermediary or search engine provider was in fact the publisher. This allows proceedings involving digital intermediaries to be determined expeditiously.

Another purpose of the limitations is to minimise the need for a digital intermediary that is not actively participating in the publication of defamatory matter to actively monitor and interfere with how people choose to use their services. This purpose also promotes the right to privacy and reputation for service users.

A further purpose of the limitations is to ensure that criminal liability is not unjustly imposed through the lack of availability of a statutory exemption being a lawful excuse for criminal defamation, while ensuring fairness by requiring an accused person to adduce evidence to establish the lawful excuse including matters which are likely to be uniquely within their knowledge.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations imposed by the new statutory exemptions will help to achieve the purpose of allowing proceedings to be determined fairly and expeditiously by providing clear exemptions for digital intermediaries in civil or criminal proceedings. It will also help achieve the purpose of minimising the need for a digital intermediary to actively monitor and interfere with how people choose to use their services by creating a clear statutory exemption from defamation and obviate the need for this to occur.

The limitations will also help to achieve the purpose of ensuring fairness in criminal proceedings by allowing an accused person to adduce evidence to establish the new statutory exemption as a lawful excuse.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of clarifying the scope of liability and allowing it to be determined expeditiously within civil proceedings.

Both exemptions are framed narrowly and are limited to digital intermediaries that typically have passive, rather than active, participation in the publication of digital matter and require necessary conditions to be met. This ensures that the limitations are framed in such a way to only do what is necessary to achieve the purpose. There is no reasonably available way to achieve the purpose of ensuring fairness in criminal proceedings rather than requiring the accused person to adduce evidence to establish the lawful excuse.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitations on the right to privacy and reputation and rights in criminal proceedings, the importance of clarifying the scope of liability of digital intermediaries and allowing proceedings involving them to be determined expeditiously and fairly, and minimising the need for a digital intermediary to actively monitor and interfere with how people choose to use their services, is considered to outweigh the limitation on the right to privacy and reputation and rights in criminal proceedings.

(f) any other relevant factors

The Bill is important for two additional reasons:

- to ensure Queensland fulfils its obligations under the Model Defamation Provisions Intergovernmental Agreement;
- to limit exposure to forum shopping; and
- to ensure a consistent approach between civil and criminal provisions.

One of the drivers for the introduction of the MDPs was the intention to reduce forum shopping among states and territories which had previously applied different defamation laws. A significant tool to reduce forum shopping was the introduction of an intra-jurisdictional “choice of law” test in section 11 of the MDPs. Section 11 of the MDPs (section 11 of the Defamation Act) introduced a choice of law test for defamation proceedings “*if there is a multiple publication of matter in more than one Australian jurisdictional area*” (s 11(2)). This requires the court to determine with which Australian state or territory jurisdiction “*the harm occasioned by a publication of matter has its closest connection*” according to a non-exhaustive list of factors (s 11(3)):

- the place at the time of publication where the plaintiff was ordinarily resident or, in the case of a corporation, the place where the corporation had its principal place of business at that time;
- the extent of publication in each relevant Australian jurisdictional area;
- the extent of harm sustained by the plaintiff in each relevant Australian jurisdictional area; and
- any other matter that the court considers relevant.

Given the changes contained in the MDAPs might be considered more/less favourable to a party depending on the circumstances of their claim/defence, there is potential for forum shopping until the legislation of jurisdictions is uniform again. This risk is further heightened because the defamation landscape has changed and publication in multiple jurisdictions via online distribution is now more commonplace. There will be circumstances where

the application of the section 11(3) factors does not definitively point to one state or territory over another, raising the possibility of increased preliminary disputes under section 11.

The following consequences may arise if forum shopping occurs:

- given that in some matters the MDAP revisions could be determinative, both parties may invest significant resources in making or opposing applications to transfer proceedings to different jurisdictions based on perceived advantage;
- any such applications would increase the expense and delay involved in defamation proceedings filed during the time when laws differ; and
- given defamation forum shopping had been in abeyance for 15 years, it is difficult to know how courts in different states might apply the section 11 choice of law test, or how it would work in the federal jurisdictional context.

Providing a digital intermediary with a new defence in relation to defamatory digital matter

(a) the nature of the right

The Bill provides a new defence specific to digital intermediaries in relation to the publication of defamatory digital matter where the digital intermediary had an accessible complaints mechanism for the plaintiff to use at the time of publication. The defence will be available to defendants who moderate content by taking reasonable access prevention steps to remove, block disable or otherwise prevent access by persons to content that may be defamatory or breach the terms or conditions of the online service before a complaint was made, or within seven days after a complaint was given.

The Bill also amends the Criminal Code to ensure that the new defence in relation to defamatory digital matter operates as a lawful excuse in criminal defamation proceedings.

A discussion around the nature of the right to freedom of expression and rights in criminal proceedings are set out under the heading ‘Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)’ above.

The inclusion of the new defence limits freedom of expression by incentivising digital intermediaries to take active steps to prevent and remove digital matter that may be defamatory and provides people with an easier and quicker process to act against such digital matter. If utilised, this will impact on the free flow of information and ideas between people, in particular because it applies to digital matter that is the subject of a complaint that is not necessarily defamatory but merely alleged to be.

The amendments will limit rights in criminal proceedings because a person accused of criminal defamation will need to adduce evidence if they wish to establish a lawful excuse in the form the new defence, which the prosecution has the burden of negating. This limits the presumption of innocence by placing an evidential burden on the accused person.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations 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.

A further purpose of the limitations is to ensure that criminal liability is not unjustly imposed through the lack of availability of the new defence, while ensuring fairness by requiring an accused person to adduce evidence to establish the lawful excuse including matters which are likely to be uniquely within their knowledge.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations help achieve the first purpose by incentivising digital intermediaries to consider moderating content that is the subject of a complaint. This will promote the rights of persons to not have their reputation unlawfully attacked through that content.

The limitations will also help to achieve the second purpose of ensuring fairness in criminal proceedings by requiring an accused person to adduce evidence if they wish to establish the new defence as a lawful excuse.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The limitations are necessary to achieve the purposes. It is not considered that there are any reasonably available alternatives to achieve the purposes.

The safeguard of providing a seven-day timeframe to take action after a complaint is made is to allow adequate time for a digital intermediary to properly consider the substance of a complaint, and therefore reduce the impacts on freedom of expression by moderating content with inadequate consideration of the relevant issues. It is not considered that a longer timeframe would reduce the adverse impacts on the right to privacy and reputation.

An additional safeguard applies so that the defence may be defeated if the plaintiff proves that the defendant was actuated by malice in establishing or providing the online service by means of which the matter was published. An example of this kind of malice is a person who creates a social media page for the purpose of encouraging users of the social media platform to post comments about the plaintiff being dishonest or incompetent in circumstances where the defendant had no reason to believe the plaintiff was dishonest or incompetent. This also reduces the scope of the restriction and limits it to that necessary to achieve the purposes.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The nature and extent of the limitation on the right to freedom of expression and rights in criminal proceedings, is balanced with the importance of the purposes of promoting the right of persons to not have their reputation unlawfully attacked through publication of defamatory digital matter and ensuring fairness in criminal proceedings. On balance, the promotion of the right to reputation and fairness in criminal proceedings is considered to outweigh the limitation on the right to freedom of expression and rights in criminal proceedings.

- (f) any other relevant factors

See relevant factors identified under ‘Exempting a digital intermediary from liability for defamation for the publication of digital matter in certain circumstances’.

Requiring courts to take certain matters into account when making orders in relation to preliminary discovery

- (a) the nature of the right

The identity or address of posters of defamatory digital matter is often unclear or uncertain and consequently courts are sometimes asked to make orders for, or in the nature of, preliminary discovery to assist in identifying posters so that documents like concerns notices and originating processes can be given to, or served on, them.

The Bill confirms that a court, in making a preliminary discovery order, is required to take into account the objects of the Act and privacy, safety or other public interest matters that may arise if the order is made.

The nature of the right to fair hearing is set out under the heading ‘Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)’ above.

The amendments limit the right to fair hearing as it may make it more difficult for a plaintiff to obtain a preliminary discovery order, and therefore impede their ability to commence a defamation proceeding.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to minimise the risks of abuse of process and risks to privacy and safety, including for vulnerable community members where an order is sought to obtain a person’s personal information for ulterior or nefarious reasons (for example where a person seeks an order to find out another person’s location and not to obtain the information to enable them to commence defamation proceedings). This in turn promotes the right to privacy and reputation.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation helps to achieve the purpose by expressly requiring the court to take into account the purpose of the Act and privacy, safety or other public interest matters that may arise if the order is made.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive ways and reasonable available ways to achieve the purpose. The provision does require new factors to be taken into account but does not limit the matters that the court may take into account.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to freedom of expression, the importance of the purpose of minimising the risks of abuse of process and risks to privacy and safety is considered to outweigh the limitation on the right to freedom of expression.

- (f) any other relevant factors

See relevant factors identified under ‘Exempting a digital intermediary from liability for defamation for the publication of digital matter in certain circumstances’.

Enabling courts to make orders against non-party digital intermediaries

- (a) the nature of the right

The Bill will include amendments to confer a power on a court 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 judgement for defamation, or a temporary injunction or order or final injunction, against the defendant.

The nature of the right to freedom of expression is set out under the heading ‘Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)’ above.

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

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to promote the right to privacy and reputation by ensuring that a complainant who has obtained an order or judgement against a poster of defamatory digital matter will have the court's assistance if the poster does not comply, or appears unlikely to comply, with the court's order or judgment, and it is appropriate for the court to require a digital intermediary to take steps to assist the complainant, for example, by blocking access to the matter.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will help achieve the purpose by ensuring that there is no longer uncertainty in relation to court powers to make orders in relation to non-party digital intermediaries who host or otherwise facilitate access to defamatory matter.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are not any less restrictive and reasonably available ways to achieve the purpose. There are a number of safeguards that operate to limit the restriction. In particular, except for a temporary order that needs to be made expeditiously pending another hearing, a court must give the digital intermediary an opportunity to be heard about whether it is appropriate for the order to be made. The provision is also not intended to affect the high bar set at general law for granting injunctions.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to freedom of expression, the importance of the purpose promoting the right to privacy and reputation in the manner identified is considered to outweigh the limitation on the right to freedom of expression.

- (f) any other relevant factors

See relevant factors identified under 'Exempting a digital intermediary from liability for defamation for the publication of digital matter in certain circumstances'.

Extending the defence of absolute privilege to publications of defamatory matter to official of Australian police services or forces

- (a) the nature of the right

Currently, the Act does not provide for the defence of absolute privilege to apply to publications of defamatory matter to police forces or services. Therefore, typically, defendants must rely on the defence of qualified privilege if a defamation suit is brought in relation to a report to police. Unlike the defence of absolute privilege which is indefeasible once established, the

defence of qualified privilege has certain conditions which must be proven and can be defeated if the plaintiff proves the defendant was actuated by malice.

Amendments in the Bill extend 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 the official is acting in an official capacity.

The nature of the right to privacy and reputation is set out under the heading ‘Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)’ above.

The Bill limits the right to privacy and reputation as it will provide an indefeasible defence to a defamation claim, even in circumstances where the defendant was actuated by malice.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to address the ‘chilling effect’ or the threat of potential defamation proceedings that may deter some people from making complaints to police forces or services and address the real or perceived insufficiency of the safeguard of qualified privilege to address this. Removal of this barrier will result in people not being deterred in making complaints, which may result in prosecutions of offences and other responses to address unlawful conduct and supports the public interest in bringing offenders and persons engaging in unlawful conduct to account. It will also promote freedom of expression in the making of complaints.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

As discussed in the background paper prepared by Victoria and titled *Consultation Paper – Model Defamation Provisions Review Stage 2 Part B – August 2022* (Victorian Paper):

- anecdotal evidence indicates that the threat of potential defamation proceedings may be deterring some people from making complaints to police forces or services and other complaints handling bodies; and
- anecdotal evidence in international jurisdictions with similar provisions, such as the United Kingdom suggests that such an extension has not resulted in any increase in false reporting and the prevalence of false, misleading or vexatious publications in a variety of reporting settings has consistently found them to be rare.

Based on this anecdotal evidence, applying absolute privilege to publications to police will address the ‘chilling effect’ by making it less likely that a person is deterred from making a complaint, and is not expected to result in an increase in false reports which would detract from the achievement of the purpose.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A possible way to limit the impact on the right to privacy and reputation is to apply absolute privilege to a narrower range of circumstances or conduct that might be reported to police. However, the Victorian paper noted that the existence of a ‘chilling effect’ of the threat

of potential defamation proceedings was not limited to circumstances of alleged sexual misconduct but a range of other circumstances including alleged family violence, physical assaults and discrimination and circumstances of unequal power dynamics. Therefore, narrowing the limitation is not considered appropriate to achieve the purpose.

As also discussed in the Victorian paper, changes to qualified privilege would not be considered sufficient protection for victim-survivors and therefore would not be appropriate to achieve to the purpose.

There are existing safeguards such as a penalty for making a false declaration that the person knows is false in a material particular under section 194 of the Criminal Code.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to freedom of expression, the importance of the purpose addressing the ‘chilling effect’ in the manner identified is considered to outweigh the limitation on the right to privacy and reputation.

(f) any other relevant factors

See relevant factors identified under ‘Exempting a digital intermediary from liability for defamation for the publication of digital matter in certain circumstances’.

Conclusion

In my opinion, the Defamation and Other Legislation Amendment Bill 2025 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the Act.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for the Integrity