

Defamation and Other Legislation Amendment Bill 2025

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity

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

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Defamation and Other Legislation Amendment Bill 2025 (the Bill).

In my opinion, the amendments are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

The amendments to be moved during consideration in detail of the Bill will amend:

- the Criminal Code to clarify the definition of ‘fresh evidence’ for the double jeopardy exception framework, to ensure offenders are not prevented from being retried for offences as a consequence of historical deficient DNA testing practices; and
- the *Evidence Act 1977* (Evidence Act) to ensure that tendency and coincidence evidence may be adduced in a committal proceeding, while excluding the rules of admissibility under Part 7A of the Evidence Act from applying to committal proceedings.

Human Rights issues

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

In my opinion, the amendments to be moved during consideration in detail do not limit human rights protected under the HR Act.

Amendments relating to the double jeopardy exception framework

While the amendments will operate retrospectively to the extent they clarify the scope of the exercise of reasonable diligence irrespective of whether an investigation or prosecution occurred before or after the commencement, I consider that the amendments do not engage or limit section 35 of the HR Act.

Section 35 prohibits the retrospective application of criminal liability, protecting people from being found guilty of an offence for conduct that was not an offence at the time of the conduct, and from being unfairly penalised by a penalty being increased after an offence was committed. However, it does not prevent retrospective changes that do not form part of criminal liability, penalty, or punishment.

Specifying circumstances that do not constitute a failure by a police officer or prosecutor to exercise reasonable diligence in the investigation or prosecution of an offence clarifies the procedural safeguards for the double jeopardy framework, but does not change criminal liability. The amendments therefore do not interfere with the right to be protected from the retrospective criminal laws.

Amendments relating to the tendency and coincidence evidence framework

In my opinion, the human right relevant to these amendments is the right to a fair hearing (section 31).

While the amendments clearly exclude the application of the rules for the admissibility of tendency and coincidence evidence under sections 129AC to 129AK of the Evidence Act to committal proceedings, it does not impair or restrict the ability of a higher court to ensure a fair hearing during the trial.

The admissibility of tendency or coincidence evidence can still be challenged prior to or at the trial proceeding and the higher court still retains its discretion to exclude evidence if satisfied that it would be unfair to the defendant to admit that evidence. As such, while fair hearing rights are engaged, I do not consider that the amendments impose any limitation.

Conclusion

In my opinion, the amendments to be moved during consideration in detail are compatible with human rights under the HR Act because they do not limit the protected human rights.

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