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11 May 2021

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
**BRISBANE QLD 4000**

By email and post: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear Committee Secretary,

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

We welcome the opportunity to provide a submission to the parliamentary committee in relation to the *Defamation (Model Provisions) and Other Legislation Amendment Bill 2021* (Qld) (**the Bill**).

LawRight is a community legal centre and the primary facilitator of structured pro bono legal services in Queensland. LawRight's Court and Tribunal Services assists individuals, primarily self-represented litigants, with proceedings in the District Court, Supreme Court, the Court of Appeal, the Federal Court and Federal Circuit Court and the Queensland Civil and Administrative Tribunal. In the previous three financial years, 20-25% of the total clients assisted through our State Courts office have been involved in commencing or defending defamation proceedings.

LawRight previously contributed to the Council of Attorneys-General Review of the Model Defamation Provisions by:

- providing a [submission in response to the Review of Model Defamation Provisions Discussion Paper on 30 April 2019](#) (**discussion paper submissions**);
- participating in a Stakeholder Workshop on 12 June 2019;
- providing a [submission to the draft Model Defamation Amendment Provisions](#) (**draft MDAPs submission**) on 22 January 2020; and
- participating in a Stakeholder Roundtable on 26 May 2020.

In our discussion paper submissions and our draft MDAPs submissions, we focused on four key areas:

1. Single publication rule;
2. Pre-trial procedures;
3. Defence of honest opinion; and

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#### 4. Serious harm threshold test.

LawRight intends to limit our submission in relation to the Bill to these four key areas and specifically the relevant amendments to these areas that implement the *Model Defamation Amendment Provisions 2020 (the MDAPs)*.

##### **1. Single publication rule:**

In our discussion paper submissions, we noted that unless additional consideration is given to the limitation period for actions in defamation and the associated discretionary power of the courts to extend those limitation periods, a single publication rule may not provide sufficient protections and remedies for persons whose reputations are harmed by the publication of defamatory material. With that concern in mind, LawRight is supportive of the sections of the MDAPs and the proposed amendments in *Clause 30 Insertion of new s10AB* of the Bill and the changes to the *Limitation of Actions Act 1974 (Qld)* which include a mechanism for a plaintiff to apply to the court to extend the relevant limitation period. The proposed amendments address our concerns and appropriately balance the protection of a plaintiff's reputation with the need to reduce the risk of 'endless' limitation periods caused by digital publication and online archiving.

##### **2. Pre-trial procedures:**

LawRight is supportive of the clauses of the Bill which make amendments to pre-trial procedures, particularly regarding mandatory concerns notices and the content of offers to make amends. In our draft MDAPs submissions, we raised a concern about the provisions relating to the timing for making offers to make amends in the context of requests for particulars of concerns notice, and the possibility for confusion to arise. We were pleased that the MDAPs clarified the relevant timing of the offer to make amendments in line with our submissions, and are also pleased that '*Clause 9 Amendment of s14 (When offer to make amends may be made)*' adopts this amendment.

LawRight is also supportive of the clauses of the MDAPs and the Bill regarding mandatory concerns notices. In our draft MDAPs submissions, we raised a concern that the draft provisions did not make it clear how the court should treat proceedings commenced where a party has not complied with this section. We recommended that amendments should be made to account for these circumstances or to include an additional subsection clarifying that the court can excuse non-compliance with the giving of a concerns notice. LawRight is pleased to see that the MDAPs and the Bill at *Clause 8 Insertion of ss12A and 12B* clarifies that the court can excuse non-compliance with the relevant provisions pursuant to the proposed s12B(3). We look forward to seeing further judicial interpretation of this section and in what circumstances the court will excuse non-compliance in circumstances where it is *just and reasonable* to do so.

In our view, the introduction and improvement of the section relating to mandatory concerns notices will significantly aid the clients we assist. If independent advice is

available for all parties, these amendments should help resolve a significant number of disputes without the need for proceedings to be commenced.

### **3. Defence of honest opinion**

LawRight is supportive of the relevant sections of the MDAPS and *Clause 19 Amendment of s31 (Defences of honest opinion)* of the Bill that relate to the defence of honest opinion. We are particularly supportive of the clarification for the purposes of this section as to when an opinion is based on proper material. As provided in our draft MDAP submissions, we consider the amendments recognise the ways in which contextual information is made available or accessible in digital publications which will increase the accessibility of this defence for online publications.

### **4. Serious harm threshold**

LawRight is supportive of the introduction of a serious harm threshold and the corresponding removal of the defence of triviality. As noted in our previous submissions, the introduction of such a threshold will hopefully discourage spurious or trivial claims and allow for a mechanism for such proceedings to be resolved promptly. In our casework, we often see relatively trivial claims commenced for ulterior or improper reasons and we are hopeful that this provision will limit the number of these matters that progress through the court. We also look forward to judicial interpretation about the practical procedure and relevant factors to consider when the serious harm question is heard and determined at an early stage in the court proceedings.

### **Conclusion**

In summary, LawRight is broadly supportive of the MDAPs in the areas referred to above and the Bill introducing those amendments into the equivalent Queensland legislation. We look forward to the positive impact this Bill will have for our clients, appreciate the opportunity to provide feedback on this important Bill, and otherwise look forward to its commencement.

If you have any questions about this submission or require further information, please do not hesitate to contact me [REDACTED]

Yours faithfully



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