



Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc

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Your reference : 594740/4, 000839
Our reference : ak:cp

9 September 2022

Policy, Reform & Legislation
NSW Department of Communities and Justice
Locked Bag 5000
PARAMATTA NSW 2124

defamationreview@ministerial.qld.gov.au

Dear Madam/Sir

RE: RESPONSE TO MODEL DEFAMATION AMENDMENT PROVISIONS – PUBLIC CONSULTATION

The Aboriginal and Torres Strait Islander Women's Legal Services North Queensland ("ATSIWLSNQ") is pleased to be offered the opportunity to respond to the Stage 2 review of the Model Defamation Amendment Provisions. Regrettably we have limited capacity to respond at this time due to time frames and the capacity of the service, but the service endorses the recommendations that have arisen from Stage 1 of the review, particularly Recommendation 6.

While ATSIWLSNQ does not represent clients in defamation matters, it provides assistance, advice and representation to vulnerable women, including victims and survivors of domestic and family violence, some of whom would be at risk if their contact details were to be disclosed to their abusers. Various measures, including redacting identifying information in court documents and using alternative addresses for service, offer a degree of protection for women at risk of harm from their abusers. Internet anonymity or pseudonymity is another tool that vulnerable women can use to protect themselves against domestic and family violence and other abuse.

Women are at risk from abusers who misuse court processes to further their violence against them. Some abusers initiate defamation proceedings to exert coercive control against a victim who speaks out about their abuse. As many victims are already socially and financially disadvantaged, the mere threat of litigation may be sufficient to coerce them into silence. Anonymous or pseudonymous internet postings can grant these victims the freedom to speak out about their experiences of abuse without fear that their abusers will use the threat of defamation proceedings prevent them from expressing themselves.


To this end, ATSIWLSNQ endorses Recommendation 6 of the review of the Model Defamation Amendment Provisions. We support inclusion of a section instructing courts granting preliminary discovery orders to complainants in defamation matters, to take into consideration the objects of the Model Defamation Provisions and any privacy, safety or public interest considerations which may arise should the preliminary discovery order being made.¹ Such a provision would allow for a judge to consider safety concerns when considering whether or not to grant a preliminary discovery order in defamation proceedings against vulnerable people, such as victims of domestic and family violence.

¹ Department of Communities and Justice, Parliament of New South Wales, *Background Paper: Model Defamation Amendment Provisions 2022 (Consultation Draft)* (Background Paper, August 2022) 52.

This would have the dual benefits of physically protecting victims from abusers who use discovery as a means of locating a victim with the intention of causing them harm, and protecting victims from abusers who maliciously abuse court processes to threaten and intimidate a victim into silence.

Yours sincerely

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Principal Solicitor
ATSIWLSNQ Inc.