

19 May 2021

Defamation Working Party
Policy Reform and Legislation
Department of Communities and Justice
New South Wales

BY EMAIL: defamationreview@justice.nsw.gov.au

Dear Colleagues

SUBMISSIONS IN RESPONSE TO THE STAGE 2 DISCUSSION PAPER REVIEW OF MODEL DEFAMATION PROVISIONS

Thank you for the opportunity to provide submissions in response to Stage 2 of the review of the model defamation provisions, particularly how they may relate to professional disciplinary bodies such as the Queensland Legal Services Commission (Commission).

Under the Queensland *Legal Profession Act 2007* (Act), the Commission has the power to regulate the legal profession in Queensland, including receiving and, where appropriate, investigating and prosecuting complaints about the conduct of lawyers and their employees. The Commission works with other regulatory authorities to administer the Act in the interests of justice, and for the protection of consumers of legal services and the public generally.

The Bar Association of Queensland and the Queensland Law Society are the professional representative bodies of barrister and solicitors respectively and have functions under the Act as part of the Queensland co-regulatory model. The Legal Practitioners Admissions Board also discharges functions under the Act in relation to the admission (and re-admission) of individuals to the local roll kept under section 37 of the Act.

Following the review of the discussion paper, I note that it particularly seeks response to Question 21. I provide the following submissions in relation to those questions from the Commission's perspective:

- 21(a) and (b) Yes. Absolute privilege should apply to complaints of discrimination, sexual harassment, unlawful harassment and workplace bullying to a professional body, such as the Commission. This would codify the common law that exists in Queensland in relation to absolute privilege of complaints to entities such as the Commission.
- 21(c) Schedule 1 of the Model Defamation Provisions should be amended to include the Queensland Legal Services Commission, Queensland Law Society, the Queensland Bar Association, and the Queensland Legal Practitioners Admissions Board, including any members of staff, investigators, boards and committees of those entities.
- 21(d) The Act makes it an offence for person to state false or misleading information or to give false or misleading documents to an investigator under the Act.

Additional safeguards should be available to prevent false and misleading information or documents being made public. This can be achieved by:

- Expanding the false and misleading provisions in the *Legal Profession Act 2007* (Qld) to not only include investigators but all entities identified in my answer to 21(c);
- Providing for disciplinary hearings in relation to conduct matters detailed in my answer to 21(a) and (b), in particular sexual harassment, to be closed and the filing of any applications to be sealed until such time as a finding has been made in relation to the Australian lawyer's conduct; and
- For the Commission to be an entity to which the *Right to Information Act 2009* (Qld) does not apply, in relation to complaints or investigations.

I again thank you for the opportunity to provide my submissions.

Yours sincerely



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Legal Services Commissioner

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