

**REPORT OF THE LEGAL ADVISORY GROUP ON  
DEFAMATION**

**MARCH 2003**

## **Report of the Legal Advisory Group on Defamation**

### **Part I: Introduction and Terms of Reference**

#### **Introduction**

1. The Legal Advisory Group on Defamation was established by the Minister for Justice, Equality and Law Reform in mid-September, 2002. This was against a background where the Agreed Programme for Government indicated that the Government would, in the context of a statutory Press Council and improved privacy laws, move to implement reforms of libel laws designed to bring them into line with those of other states. A key task for the Group was to take account of recent developments in other jurisdictions which had occurred since the very comprehensive report of the Law Reform Commission on the Civil Law of Defamation had been published in 1991. The Group also had at its disposal the proposals for a new Defamation Bill which had been approved by the previous Government in December 2001.

#### **Terms of Reference**

2. The Terms of Reference for the Group were as follows:

“Having regard to the agreed Programme for Government, which contains a commitment to implement reforms in the area of libel law so as to bring the law here into line with the laws of other states, to review the General Scheme of a Defamation Bill, 2001, which was agreed by the then Government in December 2001, in order to give best effect to that commitment and, in that context:

- to review relevant domestic and international material with a view to suggesting such changes or additions to the present Scheme as may be consistent with best practice in other jurisdictions and which will result in a more efficient defamation regime in this country;
- to consider, without prejudice to the generality of the foregoing:
  - the scope which should attach to the defence of qualified privilege particularly where comment on matters of public interest is concerned;
  - the respective roles which should be assigned to judge and jury in High Court actions, and

- the operation of the law insofar as the presumption of falsity is concerned;
- to consider the nature and extent of any statutory intervention which might attach to the establishment of any entity concerned with the regulation of the press, to examine the particular modifications in the law which the establishment of such an entity might warrant, and, to make specific proposals in this regard, and
- to report to the Minister for Justice, Equality and Law Reform no later than 31 December 2002\*.

### **Procedure of the Group**

3. The Group met regularly between October 2002 and March 2003 and, at the outset, it was agreed that any conclusions reached should be entirely consistent both with the Constitution and the European Convention on Human Rights. It was also agreed that the Group should work to ensure that any recommendations were technology-neutral and should accommodate the internet as much as possible. While some written material was prepared by individual members of the Group on matters pertaining to the terms of reference, the methodology adopted by the Group focused primarily on oral debate and analysis which, in turn, was informed by ongoing consideration of relevant international developments. In keeping with the Terms of Reference, the Group's focus was primarily on how to give best technical effect to the range of matters encompassed both by those terms and by the proposals which had been approved in December 2001. The aim was also to ensure that the law of defamation would be efficient and workable from the perspective of both defendant and plaintiff alike and, not least, provide for speedier and more effective remedies in appropriate cases. The Group also worked within a framework of consensus and the recommendations contained in this Report are reflective of the consensus which was reached on all the matters under discussion.

\* This deadline was extended at the request of the Group

In this context, the recommendations should be viewed as an inter-linked package which contains within itself the appropriate checks and balances designed to protect all relevant competing rights both under the Constitution and under relevant international instruments.

4. The Group was very much of the view that, in order for it to fulfil its terms of reference fully, it was highly desirable that the full impact of its recommendations be teased out in legislative form. Accordingly, the Group spent a considerable amount of time in developing the text of a draft Defamation Bill which could replace the existing Defamation Act, 1961 in its entirety. The key elements of that draft text are discussed in general terms in respect of each of the recommendations which are detailed in this Report. For the convenience of the reader, the general discussion of each of those recommendations is also accompanied by a short summary which aims to highlight those key elements.
5. An abbreviated summary of the Group's recommendations is contained in Appendix I while the members of the Group are listed in Appendix II. The text of the draft Bill referred to in the preceding paragraph is to be found in Appendix III.

## **Part II: Recommendations on matters specifically itemised in the Terms of Reference**

### **Scope which should attach to the defence of qualified privilege where comment on matters of public interest is concerned**

6. In considering this term of reference, the Group was conscious of the need to have regard not only to the values implicit in the Constitution, but also to relevant international jurisprudence and, in particular, to the jurisprudence of the European Court of Human Rights (ECHR) insofar as Article 10 of the European Convention on Human Rights was concerned. Article 10 reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”.

7. In reviewing the relevant jurisprudence of the ECHR since the mid-nineties, it was possible to identify a number of key principles. Clearly, the ECHR, in addressing the norms appropriate in a democratic society, attributed considerable importance both to political speech in the Article 10 context and to the role of the press in that context. In applying the protections afforded by Article 10, the ECHR also appeared to be

disinclined to distinguish between political discussion, on the one hand, and discussion of other matters of public concern, on the other. In consequence, it would appear that Article 10 functions to protect not just discussion which touches upon figures in public life but also embraces debates on questions of broad public interest. It would also appear to be the case that, in recognising the duties and responsibilities inherent in the exercise of freedom of expression, the ECHR has made the application of those protections subject to the proviso that those seeking to avail of them should act in good faith, and reasonably. While the context will generally determine what is reasonable, it would, at the least, seem to require adequate research so that accurate information can be provided to the public which accords with the highest ethics of journalism. Looked at in the round, therefore, the jurisprudence would suggest that there is a strong case in favour of the idea of affording something like a broad qualified privilege on matters of public interest which has due regard to good faith principles.

8. The Group also had regard to the way in which the defence of qualified privilege has been expanded upon in the United Kingdom. Recent developments demonstrate that, in applying the interest and duty tests which are an intrinsic feature of the defence as traditionally understood, there is now a recognition that, in an appropriate case, the duty may be owed to, and the interest reside in, the general public insofar as the publication of material is concerned. Regard will also be had to the nature, status and source of the material, and to the circumstances of the publication so as to determine whether that publication should, in the public interest, be protected in the absence of proof of express malice. By way of elaboration, a range of factors must now be taken into account by a judge in determining whether a qualified privilege defence ought to be held to be established on any given set of facts. These include the seriousness of the allegation, the nature of the information and the extent to which it is of public concern, the source of the information, the steps taken to verify the information, the status of the information and the urgency which attaches to the matter, whether or not comment was sought from the plaintiff and if the article contains the gist of the plaintiff's story, and, finally, the tone of the article. These developments clearly highlight the fact that there is now considerable divergence between this area of the law as it applies in the United Kingdom and as it currently applies in this jurisdiction. Given the similarity of our legal traditions, it is likely that this divergence is not sustainable in the medium to long term.

9. The Group also had regard to recent developments in Australia and New Zealand where the tendency has been in the direction of judicial development of a specific privilege in respect of political speech. In the latter jurisdiction the privilege applies in respect of generally-published statements made about the actions and qualities of those currently or formerly elected to Parliament and those with immediate aspirations to be parliamentary members. In the former jurisdiction, the privilege is broader in scope since it extends to communications made to the public on a government or political matter subject to a requirement that, to avail of the privilege, a defendant must show that their conduct in publishing was reasonable.
10. The Group also took note of recent developments in New South Wales where the existing defence of qualified privilege is already subject to a requirement that the conduct of the publisher in publishing the matter in question is reasonable in the circumstances. In that jurisdiction, statutory expression has now been given to a set of factors which the courts may consider when assessing reasonableness. Those factors are not dissimilar to those outlined in respect of recent developments in the United Kingdom (see paragraph 8 above). The Group also had regard to recent legislative developments in the Australian Capital Territory where a specific defence has now been created in respect of non-negligent publication. Finally, the Group also took note of an aspect of the defence of qualified privilege as it applies in the States of Queensland and Tasmania where qualified privilege attaches to publications made in good faith in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which is for the public benefit.
11. The work done by the Group on this complex issue suggested clearly that there were certain deficiencies in the approach which the Irish law of defamation at present takes towards the publication of matters which would generally be regarded as being in the public interest. It is clear that the law is out of step with developments in other jurisdictions which share our legal tradition. It is arguable, indeed, that it is out of step both with the values which are enshrined in the Constitution and with the values enshrined in the European Convention of Human Rights. In the view of the Group, if there is no statutory intervention on this point in the near future, it is only a matter of time before the deficiencies which now exist are addressed by way of judicial intervention, be it within our own courts or within the international arena. It is also the

view of the Group that it would be preferable to take a decision at this time as to the parameters of any legislative intervention, lest that decision be pre-empted by developments which take place outside the legislative sphere.

12. Accordingly, the Group strongly recommends the introduction of a statutory provision to provide for, subject to the appropriate safeguards, an enhanced protection in respect of publications made in the public interest. While the Group discussed the merits of expanding the qualified privilege defence, it was felt, on balance, that it would be more appropriate and transparent to develop a new defence which would relate exclusively to this kind of publication. The Group therefore recommends that statutory expression should be given to a new defence which it is suggested might be called the “defence of reasonable publication”. This defence would be available where a defendant could show that the publication in question was made in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which was for the public benefit.
13. The defence would be subject to an over-arching requirement that, in all the circumstances of the case, it was reasonable for the publication to be published. In determining what was reasonable in the circumstances, the court would be guided by a number of matters which would be permissive and not exhaustive. Relevant matters should include the following:
  - the extent to which the matter complained of is of public concern,
  - the extent to which the matter complained of concerns the performance of the public functions or activities of the person who is the subject of the defamation proceedings,
  - the seriousness of any defamatory imputations carried by the matter complained of,
  - the context and content (including the language used) of the matter complained of,
  - the extent to which the matter complained of distinguishes between suspicions, allegations and proven facts,
  - whether it was necessary in the circumstances for the matter complained of to be published expeditiously,
  - the sources of the information in the matter complained of and the integrity of those sources,



- whether the matter complained of contained the substance of the plaintiff's side of the story and, if not, whether a reasonable attempt was made by a publisher to obtain and publish a response from that person,
  - any other steps taken to verify the information in the matter complained of.
14. The defence should be forfeited if the publication in question was actuated by spite, ill-will or improper motive.
15. In the view of the Group, a provision along the lines outlined above would represent a distillation of best international practice in those jurisdictions with which we share a common legal tradition. It would also give full expression to the values inherent both in the Constitution and in the European Convention on Human Rights.

### **Summary**

- **A new defence of reasonable publication should be created.**
- **This would relate directly to matters published in the public interest, the public discussion of which was for the public benefit.**
- **Publication must be reasonable in all the circumstances.**
- **In determining whether or not publication was reasonable, the court could take into account a broad range of relevant matters, for example, the extent to which the publication concerned the performance of the public functions or activities of a person and whether a reasonable attempt was made to obtain and publish a response from that person.**

### **Respective role of judge and jury**

16. The initial starting-point for the Group's consideration of this matter was the specific recommendation of the Law Reform Commission that the parties to defamation actions should continue to have the right to have issues of fact determined by a jury but that the damages in such actions should be assessed by a judge. Coupled with this recommendation was the proposal that the right formerly enjoyed by parties in the Circuit Court to have issues of fact determined by a jury should be restored.

17. The Group was conscious of the fact that the policy of abolishing jury trials in the Circuit Court, given effect to by the Courts Act 1971, was unlikely to be reversed in the sole context of defamation proceedings and this was one of the factors which influenced their deliberations. The Group was also alert to the valuable role which juries have to play in defamation actions given the importance, in such actions, of getting the perspective of the ordinary person as to whether the matter complained of should, or should not, be considered defamatory. At the same time, the Group recognised that there is considerable dissatisfaction with the law as it currently stands whereby juries are deprived of guidance when it comes to deciding upon the level of damages which should be awarded to a successful plaintiff in a defamation action.
  
18. The Group was very much of the view that the division of function as between judge (assessment of damages) and jury (assessment of liability) would not operate well in practice. Indeed, the view was taken that such a division could place judges in a difficult position since they would not be privy to the seriousness with which the jury viewed the defamatory matter. Accordingly, the Group concluded that juries should continue to have a role in assessing damages in the High Court. However, this role should not be unfettered. Rather, it was agreed that the parties to the proceedings should be able to make submissions to the court and address the jury concerning damages. Furthermore, a statutory provision should be introduced which would require the judge in High Court proceedings to give directions to the jury on this matter. Such a provision should be general in nature but would, in an appropriate case, allow a judge to refer to the purchasing power of the likely award, the income which it might produce, the scale of awards in previous defamation cases and the appropriate level of damages in all the circumstances of the case. These provisions should be in addition to a basic provision which would specify a broad range of factors to which regard should be had when making an award of general damages. It was felt that provisions of this kind would be consistent with recent developments within the United Kingdom and other common law jurisdictions such as New South Wales and the Australian Capital Territory and would accord well with the freedom of expression entitlement enshrined both in the Constitution and in the European Convention on Human Rights.
  
19. Given the recommendations made by the Group regarding High Court defamation actions, the role of the Circuit Court in such actions was then considered. Concern was

expressed that the proposed increase in that court's jurisdiction from €38,092 to €100,000 could, if implemented in the context of defamation actions, largely nullify the valuable role of the jury in such actions since it was likely that a large number of cases would fall outside the ambit of the High Court's jurisdiction. At the same time, the view was taken that it was important to ensure that parties be discouraged from initiating defamation proceedings in a court of higher jurisdiction simply because the potential for a damages award might be perceived to be greater in that court. The Group was anxious to reconcile these differing considerations. Accordingly, it was proposed that the Circuit Court should, in future, have jurisdiction in defamation cases where the amount of the damages claimed does not exceed €50,000. Such a limit could be varied from time to time using the provisions of section 16 of the Courts Act 1991 which allows for variations in the monetary jurisdiction of the courts to be made by way of Government order. The Group also recommended that the legislative provisions dealing with the costs implications of failing to reach the jurisdiction of the court in which the suit is brought be amended to reflect the proposed change in Circuit Court jurisdiction. It is considered that these provisions, if utilised to their full potential, could have a beneficial effect in terms of ensuring that plaintiffs bring defamation proceedings in the court which is most appropriate to the circumstances of their particular case.

20. The final element considered by the Group under this heading concerned the desirability of having a statutory provision which would make it clear that, in a defamation appeal from the High Court, the Supreme Court could substitute its own assessment of damages for the damages awarded in the High Court. The Group is of the view that there is considerable merit in a provision of this kind given the additional costs which litigants would have to bear should a new trial be ordered and where the only issue for the appellate court to determine is the appropriateness of the damages award.

### **Summary**

- **The function of assessing damages in defamation proceedings heard before a jury should remain with the jury.**
- **Parties to the proceedings should be able to make submissions to the court and address the jury concerning damages.**
- **Judges would be required to give directions to a jury on the matter of damages.**

- **In making an award of damages, regard would have to be had to a non-exhaustive list of matters including, for example, the nature and gravity of any allegation in the defamatory matter, the extent to which the defamatory matter was circulated and the fact that the defendant made or offered an adequate, sufficient and timely apology, correction or retraction, as the case might be.**
- **A special defamation jurisdiction should apply in respect of the Circuit Court which, notwithstanding any general jurisdiction limit for the time being in force, should have jurisdiction in all defamation cases where the amount of damages claimed does not exceed €50,000.**
- **There should be an avoidance of doubt provision to the effect that, in a defamation appeal from the High Court, the Supreme Court could substitute its own assessment of damages for the damages awarded in the High Court.**

#### **Operation of the law insofar as the presumption of falsity is concerned**

21. This is an issue which has tended to attract very divided views. However, looking at the matter in very practical terms, the Group was of the view that the difficulties presented by the existing law in this area were more apparent than real and was disinclined to recommend a substantive change in the status quo. The Group noted that the presumption is only relevant where the defence of justification (proposed to be re-named the defence of truth) is pleaded and the vast majority of plaintiffs would normally choose to give evidence that the allegation against them was false and, therefore, would be available for cross-examination on all relevant matters. In reaching its conclusion, the Group was also conscious of other recommendations for change in this area, notably in respect of the proposed new defence of reasonable publication which should, in future, provide an alternate avenue of defence for those who might at this time be forced to rely on the defence of justification.
22. The Group was, however, mindful of the need to address the situation where a plaintiff might choose not to give evidence on their own behalf and of the burden which this might impose on a defendant. It therefore recommends that, in defamation proceedings, all plaintiffs should, within a specific period of time, file an affidavit which would verify the particulars of their claim. The failure to file such an affidavit within the necessary time period could, in certain circumstances, lead to the claim being struck out although the court should always have discretion to extend that period. The

consequences of this new procedural element in defamation proceedings is that all plaintiffs could be examined with regard to the content of the affidavit and, if they were subsequently found to have given false evidence, a perjury charge could be brought against them.

### **Summary**

- **There should be no substantive change in the status quo insofar as the presumption of falsity is concerned.**
- **However, all plaintiffs in defamation proceedings should have to file an affidavit verifying the particulars of their claim within a specified time period.**
- **Failure to file such an affidavit within the specified time period could lead to the claim being struck out.**

### **Nature and extent of any statutory intervention which might attach to the establishment of any entity concerned with the regulation of the press**

23. The Group began its consideration of this particular term of reference by examining the extent of the regulation which attaches to other communications media, notably, radio and television. While its functions were re-vamped somewhat in 2002, the Broadcasting Complaints Commission has been in being for over twenty years. It has a broad adjudicative function in respect of complaints against the broadcast media. Its decisions are published on a regular basis and it operates within a comparatively light statutory framework.
24. The Group also considered the way in which the press, in particular, is regulated in other jurisdictions. It noted that self-regulation tends to be the norm but, within that self-regulatory framework, the mechanisms in place to deal with complaints are not dissimilar in kind to those which apply in respect of the Broadcasting Complaints Commission. Furthermore, the codes of conduct which inform the process are equally not dissimilar to aspects of the codes under which the Commission operates.
25. In that context, the Group felt it was worth exploring whether or not there were particular factors relevant in the case of the press which made self-regulation desirable in this instance and which did not extend to other communications media. The key factor which the Group identified in terms of the arguments advanced in favour of

self-regulation was the argument which suggested that statutory controls were inimical to press freedom and that self-governance was the only method whereby that freedom could be secured. The Group acknowledges fully that press freedom is fundamental in a democratic society and that the free exchange of ideas and opinions must be recognised as an indispensable element in building the values which inform such a society. The Group, however, was somewhat sceptical as to whether it necessarily follows that any statutory intervention would run counter to such desiderata and inclined towards the view that, subject to appropriate safeguards, it should be possible to construct a statutory model which would respect fully the autonomy of the press while, at the same time, providing an important element of independence and transparency which would secure public confidence in any process which might be established. The case for a statutory Press Council at the present time appears to the Group to be compelling. Accordingly, the Group recommends that a Press Council be established on a statutory basis, that its functions should include the preparation of a Press Code of Conduct and that it should also investigate complaints in respect of alleged breaches of that Code.

26. Before outlining some of the main features, as it would see it, of a statutory Press Council, the Group would like to note that, in the recent past, it was indicated that fundamental reform of public sector broadcasting was in prospect. The Group believes that such reform might provide an opportunity for the development of an all-embracing Media Council which would encompass both the press and other broadcast media which, at present, are subject to the Broadcasting Complaints Commission. There is a certain efficiency in having a unified regime in this area and, while the Group has advanced proposals which relate exclusively to the press, those proposals could, without too much adjustment, lend themselves readily to being incorporated within a broader framework.
27. The point of departure for a statutory Press Council is that it should have maximum independence in the performance of its functions and the ability to regulate its own practice and procedure. Consistent with its remit, the Group is of the view that it would be desirable to have some statutory statement as to the overriding principles which should inform the work of the Council. Such principles might include the right to freedom of expression and freedom of the press, the need to protect the public's right to full, fair, accurate and balanced reporting and the need to maintain the highest ethical and professional standards of journalism. As previously mentioned, the Council should

have a number of functions, including, the preparation of the Code of Conduct and the investigation of complaints. In addition, it would be appropriate for the Council to participate in general public debate about the broad range of matters which fall within the scope of its overriding principles.

28. The Press Code of Conduct is clearly central to the efficacy of the regulatory framework which is proposed to be established. Inevitably, such a Code must recognise the wide discretion which a publication has with regard both to the content and presentation of material. Nonetheless, without trespassing upon that discretion, it is also possible to specify standards which should be complied with and rules and practices which should be observed. By way of example, such matters could include standards of journalistic ethics and practice, the accuracy of any facts touching upon the honour or reputation of any person, or group of persons, living or dead, unreasonable encroachment upon the privacy of any person, or group of persons, living or dead and general matters concerning taste, decency and overall sensitivity in dealing with children and other vulnerable persons.
29. It will be apparent from the preceding paragraph, that the proposed Press Council would have a very broad remit which would extend well beyond matters normally comprehended by defamation proceedings. A case in point arises where it is being alleged that the reputation of a deceased person has been infringed. The Law Reform Commission had recommended that there should be a new cause of action in respect of defamatory statements made about a person who is dead at the time of publication. While disinclined to endorse this particular recommendation, the Group notes that its essential aim - to provide some mechanism whereby the reputation of a deceased person can be vindicated - can largely be realised by way of an effective Press Council, subject to the proviso that the role assigned to such a Council has the appropriate breadth.
30. A key feature of the regime proposed by the Group is that all publications published in this jurisdiction would have to comply with the Code. However, it would be open to individual publications to subscribe to the Council, on payment of an annual fee to be set by the Council, and this would carry with it certain added benefits. This is reflective of the fact that subscription involves not just a money payment, per se, but also implies a willingness to cooperate with Council investigations, to comply with any resulting

decisions and to uphold the values which the Code of Conduct would set out. For example, a subscribing publication would, as of right, be consulted by the Council when that body was preparing, or modifying the Code of Conduct. In appointing the members of the Council the Government would have to have regard to any recommendations made by publications which had subscribed to the Council. Such publications would also have the right to apply to the Council to comment on a pending complaint. Finally, subscription to the Council, among other matters, could be taken into account by a court when the defence of reasonable publication (discussed at paras 6 to 15 above) is advanced in defamation proceedings.

31. The Group has also suggested a number of standard features in relation to the complaints mechanism dealing with the entitlement to complain to the Council and with the procedures which the Council might follow in investigating and deciding upon a complaint. The basic principles which informed the Group's suggestions is that these procedures should be as informal as possible and should, to the maximum extent feasible, be within the Council's own control. The Group strongly recommends that if a complainant submits a matter for adjudication by the Council, they should not thereafter be able to institute civil proceedings before the courts in respect of the subject matter complained of. The Group also recommends that, in view of the comparatively light regime which is being proposed, the remedies at the disposal of the Council should not include damages. The remedies available should, however, include directing the relevant publication to publish the substance of the Council's decision or to publish a correction or retraction of the material complained of. The Council should also have the ability to give directions as to the manner in which a correction, for example, should be published. If a publication were to refuse to comply with a decision of the Council, the Group suggests that the Council should be empowered to apply to the Circuit Court for an order compelling compliance. Failure to comply with the court order could result in the publication in question being found to be in contempt of court. Ideally, were any monetary fine to be imposed for that contempt, such fine would then be remitted to the Council itself.
32. In addition to the standard provisions concerning membership, staffing and financing, for which there is ample precedent in a wide variety of legislation, the Group also recommends that the decisions which the Council reaches be published on a regular



basis and that an annual report be made by the Council no later than six months after the end of each year.

33. The Group is very much of the view that its proposals for a statutory Press Council can work well in practice and would not encroach in any way upon the traditional freedoms which the press rightly enjoys in our society. While believing that its proposals would be the best way forward, the Group is also aware that it is very much an all or nothing approach. Therefore, in an attempt to satisfy fully its terms of reference on this point, the Group has given some thought as to whether or not there are other proposals for statutory intervention which would not necessarily require a statutory Press Council to be established.
34. It is clearly the case that the reasonable publication defence is likely to be relied upon mainly by the media. The Group, therefore, gave some thought as to whether or not it would be appropriate to confine that defence to publications which had subscribed to some kind of self-regulatory mechanism. However, this did not seem to be practicable given that the defence encompasses not just the press but other kinds of communications media. It would also be undesirable for other reasons given the rationale which underlies the recommendation that such a defence be introduced. Nonetheless, this would not preclude the development of a statutory provision which would ensure that a court could take into account whether or not the publication in question had signed up to a self-regulatory mechanism, where it was available, in order to determine whether or not the reasonableness element of the defence had been made out. Statutory provision could also be made to allow for the participation in such a mechanism to be a mitigating factor in the context of an award of damages.
35. It is undeniably the case that the public has a strong interest in ensuring that any regulatory procedures operate in a way which is to the benefit of the public. In that context, it might not be unreasonable to contemplate a statutory mechanism which would require some kind of formal consultation process involving press interests and the relevant Minister both as to the membership of the body in question and as to the terms of any Code of Conduct. Furthermore, there could be some statutory reference to the fact that the annual report of such a body and, perhaps, its Code of Conduct, might be submitted to the relevant Minister with a view to being laid before both Houses of the

Oireachtas where they might then be the subject of public debate. Finally, compliance with these statutory references might, in turn, link in with the granting of a statutory privilege which would render such a body immune from any claim in defamation with respect to the carrying out of its stated functions.

- 36 Notwithstanding the ideas offered in the preceding paragraphs, the Group reiterates its view that the regulation of the press in this jurisdiction should, ideally, involve the establishment of a statutory Press Council and that the case for the establishment of such a body is compelling.

### **Summary**

- **A statutory Press Council should be established with functions which would include the preparation of a Press Code of Conduct and the investigation of complaints concerning alleged breaches of that Code.**
- **While necessarily independent in the performance of its functions, the Council should have regard to a number of overriding principles - press freedom, the protection of the public's right to full, fair, accurate and balanced reporting, and the maintenance of the highest standards of journalism.**
- **In appointing the members of the Council, the Government should have regard to the diversity of interests which should be represented including the interests of members of the public as readers, the interests of relevant publications and the interests of journalists and other employees of the publications.**
- **While recognising the wide discretion which a publication has with regard both to content and presentation of material, it is suggested that key elements in a future Press Code of Conduct should address the following:**
  - **standards of journalistic ethics and practice,**
  - **the accuracy of any facts or information relating to the honour or reputation of any person, or group of persons, living or dead,**
  - **unreasonable encroachment upon the privacy of any person, or group of persons, living or dead,**
  - **matters to do with taste and decency, and**
  - **sensitivity in dealing with vulnerable persons.**

- **Compliance with the Code of Conduct would be mandatory but it would be open to publications to pay a subscription fee to the Council which would enable that**

**publication to recommend persons for appointment to the Council and to comment on pending complaints.**

- **Subscription to the Council, co-operation with its investigations and compliance both with its decisions and any Code of Conduct should be matters to be taken into account by a court when determining whether or not, in the context of the defence of reasonable publication being pleaded, it was reasonable to publish the matter which is complained of.**
- **Where a complaint is upheld the Council should be able to direct the publication concerned to undertake certain remedial measures which could include:**
  - **publishing the substance of the Council's decision,**
  - **publishing a correction of inaccurate facts or information, and**
  - **publishing a retraction.**

### **Part III: Other recommendations**

37. In reviewing the proposals for a new Defamation Bill which were approved in December 2001, the Group, consistent with its Terms of Reference, agreed that certain additional provisions were desirable and made proposals accordingly. In making these proposals, the Group had regard to a range of international precedents and also had regard to practical experience in relation to the current law of defamation. These new proposals are outlined briefly in the paragraphs which follow and have been incorporated in the draft Defamation Bill prepared by the Group.
38. The Group also examined a number of important recommendations put forward by the Law Reform Commission which are not discussed directly in this Report but which were adopted by the Group and which are incorporated in the draft Defamation Bill prepared by it. Those recommendations are summarised at paragraph 61 of this report.

#### **Application of new defamation legislation**

39. Because of the many changes which are being proposed, the Group was of the view that it would be inappropriate if the proposed legislation were to apply to causes of action which accrue prior to it coming into operation and, accordingly, recommends that the legislation should only have prospective effect.

#### **Summary**

- **The proposed new Defamation Bill should only have prospective effect.**

#### **Lodgment in court**

40. The Group is strongly of the view that it is entirely appropriate that defendants in defamation proceedings should be able, with their defence, to lodge a sum of money in court in satisfaction of the plaintiff's claim regardless of whether liability is admitted or denied. It is acknowledged that there are some plaintiffs who will be content simply to take up the lodgment. It is also acknowledged, particularly where the defence of truth (now justification) is pleaded, that other plaintiffs may wish for some additional element

which will help them to vindicate in a more public way the choice which they have made. The Group therefore recommends that the legislation should facilitate the development of a procedure which would, in such cases, permit plaintiffs to inform the court formally of the fact that they have accepted the lodgment and of the consequences for them of the resolution of the defamation proceedings. This would provide the vindication element which would otherwise be missing were the lodgment procedure not to be altered in the way which is now being proposed. The Group also wishes to state that, in its view, the reform of the lodgment procedure has the potential to make a significant impact on the law of defamation in that it is likely to encourage the early settlement of actions and act to reduce legal costs.

### **Summary**

- **Defendants in defamation cases should be able to make lodgments without an admission of liability.**
- **A plaintiff who accepts a lodgment should have the option of informing the court of the fact that they have accepted the lodgment and of the consequences for them of the resolution of the court proceedings.**

### **Malicious falsehood**

41. Section 20 of the Defamation Act, 1961 contains certain provisions relating to actions for slander of title, slander of goods or other malicious falsehood. During the course of its deliberations, the Group considered whether or not it was appropriate to retain provisions of this kind. The Group formed the view that, on balance, the provisions were necessary but that they needed to be expressed in a clearer and more simplified way. The Group therefore recommends that the basis of the tort of malicious falsehood be restated so that a plaintiff, in taking an action of this kind, would have to show that the matter complained of was false, was published maliciously and referred to the plaintiff, or to the property of the plaintiff, or to an office, profession, calling, trade or business held or carried on by the plaintiff at the time of publication. The Group also recommends that any new provision should state clearly that it should be necessary for a plaintiff to show special damage in order to succeed in the proceedings except case where the publication was calculated to cause and was likely to cause pecuniary damage

either to the plaintiff or in respect of certain business-related activities carried on by the plaintiff.

### **Summary**

- **The tort of malicious falsehood should be retained but should be restated in a clearer and more simplified manner.**
- **It should be necessary for a plaintiff to show that the matter complained of was false, was published maliciously and referred to the plaintiff, or to the property of the plaintiff, or to an office, profession, calling, trade or business held or carried on by the plaintiff at the time of publication.**
- **It should also be necessary for a plaintiff to show that special damage has followed as a direct and natural result of the publication complained of except in certain limited cases, for example, where the publication was calculated to cause and was likely to cause pecuniary damage to the plaintiff.**

### **Remedies other than damages**

42. The Group endorses fully one of the essential elements in the original Law Reform Commission recommendations, namely, the need to develop expeditious remedies, other than damages, for those plaintiffs whose primary interest lies in the vindication of their reputation. In this context, the Group supported fully the incorporation in legislation of a new remedy to be known as a declaratory judgment. The Group also supported the basic idea underlying the proposal for other new remedies to be known as correction/declaratory orders but felt that the proposals as originally presented could be adapted so as to allow for a simpler, more streamlined, remedy. The Group took note of the fact that expedition in procedure is a feature of legislation introduced recently in both New South Wales and the Australian Capital Territory and also took note of certain procedural provisions which were introduced in the United Kingdom in 1996 whereby it is possible for a plaintiff to apply to the court to have a defamation action disposed of in a summary manner by a judge sitting alone. The Group recommends that a procedure analogous to that in force in the UK be introduced in this jurisdiction. However, it takes the view that, in certain circumstances, this procedure was also one which a defendant might choose to utilise and, therefore, did not think that it should be confined solely to plaintiffs. The Group also recommends that the relief available in a procedure

of this kind should not include damages, always bearing in mind that the ultimate decision as to whether or not the matter was appropriate for summary disposal would rest with the court. The purpose of a procedure of this kind is essentially to provide a mechanism whereby, in an appropriate case, a defamation action can be “fast-tracked”.

### **Summary**

- **A plaintiff in defamation proceedings should be able to apply to the court for a judgment in his or her favour and for summary relief to be granted.**
- **A defendant in defamation proceedings should be able to apply to the court, in an appropriate case, for the dismissal of a plaintiff’s claim.**
- **Summary relief could include matters such as declaratory judgments and correction orders but would not include damages.**
- **Proceedings of this kind would be heard and determined by a judge sitting alone.**

### **Aggravated damages**

43. The Law Reform Commission suggested that there was a need for an express statutory provision clarifying the circumstances where exemplary or punitive damages may be awarded in cases of defamation. While the Group acknowledges and adopts this proposal, it also takes the view that it would be appropriate to have an additional statutory provision clarifying the circumstances in which aggravated damages may be awarded and recommends accordingly.

### **Summary**

- **Not only should the circumstances governing the availability of exemplary or punitive damages be clarified but the circumstances in which aggravated damages may be awarded should also be clarified by relating such an award specifically to the manner in which the defendant conducts his or her defence.**

### **Defence of fair comment**

44. Under present law the defence of fair comment is available where it is being pleaded that the allegedly defamatory words were fair comment or expressions of opinion as opposed to statements of fact. It is an essential component of the defence that the comment or expression of opinion constitute the defendant’s honest belief and that the opinion itself



is supported by sufficient facts. The Group concurs with the recommendation of the

Law Reform Commission that the title of the defence should be changed. However, it suggests that, rather than “comment based on fact” a more appropriate title for the defence would be “honest opinion”. Such a title is more in keeping with the actual ingredients of the defence and is more meaningful in terms of its actual purpose.

### **Summary**

- **The defence now known as the defence of fair comment should be re-named the defence of honest opinion.**
- **The elements necessary to establish the defence, for example, that the opinion was supported by sufficient facts and that the opinion was given on a matter of public interest, should be set out clearly in statutory form.**

### **Offer of amends for unintentional defamation**

45. The Group is conscious of the fact that the provisions governing an offer of amends in cases of unintentional defamation, which are contained in section 21 of the Defamation Act, 1961, would not appear to be used to any great extent in practice. Nonetheless, it is the case that provisions of this kind may have the potential to facilitate the early settlement of cases where defamatory matter has been published innocently by a defendant. An up-dated version of this defence was provided for in the United Kingdom in 1996 which aimed at simplifying the procedural complexities which resulted in the defence falling largely into disuse. The Group is of the view that there would be merit in retaining this defence in modernised form and recommends that the provisions which now apply in the United Kingdom be used as a model for further statutory intervention in this area.

### **Summary**

- **The existing provisions which allow for an offer of amends in cases of unintentional defamation should be retained but in modernised form.**

### **Innocent dissemination**

46. At common law the distributors of allegedly defamatory matter, who are not themselves the publishers of that matter, have a defence if they can show that they had no knowledge of the defamation contained in the matter distributed, that there was no reason for them to suppose that the matter contained defamatory material and there was

no negligence on their part in failing to know that it contained such material. This defence is not available to printers. In recent times, the trend in other jurisdictions has been towards incorporating provisions of this kind in statutory form. The Group considered whether or not it would be sufficient to have a statutory provision which would simply be reflective of the common law position, albeit modified so as to encompass printers within its scope.

47. In looking at other legislative models, the Group was struck by the comprehensive nature of a provision introduced in the United Kingdom in 1996. Under that provision, a defence is available to a person who can show that:

(a) they are not the author, editor or publisher of the statement complained of,

(b) they took reasonable care in relation to the publication, and

(c) they did not know, and had no reason to believe, that what they did caused or contributed to the publication of the defamatory statement.

The provisions explain in considerable detail what is to be understood by the terms “author”, “editor” and “publisher”. There is also statutory guidance as to the factors which are to be taken into account in determining whether or not reasonable care was taken (extent of the person’s responsibility for the content of the statement, nature or circumstances of the publication and the previous conduct or character of the author, editor or publisher). The Group believes that these provisions should be enshrined in statutory form in this jurisdiction and suggest that this new defence be known as the “defence of innocent publication”.

48. The Group would like to draw attention to the fact that the United Kingdom provisions specifically state that a person is not to be considered the author, editor or publisher of an allegedly defamatory statement if they are only involved as the broadcaster of a live programme containing the statement in circumstances where they had no effective control over the maker of the statement. The Group thinks that a provision of this kind is appropriate, given the practical difficulties which can attach to live broadcasts.

The Group would also note that there is a clear parallel to be drawn between internet publications, on the one hand, and live broadcasts on the other. In this context, regard must be had to the new framework created by the entry into force of the E-Commerce Directive. The Group, however, is of the view that it would be prudent to modify the United Kingdom provisions somewhat so as to introduce a limiting factor into the provisions. The Group therefore recommends that a duty be placed on a broadcaster, when a potentially defamatory statement has been made, to seek, as soon as practicable, to minimise the impact of what has happened.

49. Finally, in examining the detail of the proposed new defence of innocent publication, the Group was very conscious of the need to have provisions which would address the particular issue of internet publications insofar as the operators of or providers of access to communications systems are concerned. Such persons are covered by the general provisions contained in the 1996 United Kingdom legislation. The Group, however, thought that slightly more comprehensive provisions were warranted, particularly in view of the E-Commerce Directive which imposes particular obligations on Member States in relation to the liability of intermediary service providers. New Regulations to give effect to that Directive have been published recently and, in general terms, would deal with most of the relevant issues in this context. Nonetheless, there are certain issues which are defamation-specific and which the Group thinks could usefully be incorporated in a Defamation Act.
50. For example, there is a provision in the Directive which obliges Member States to ensure that service providers shall not be liable in respect of the storage of information by the recipient of an information society service where, inter alia, the provider does not have actual knowledge of illegal activity or information. In a defamation context, the Group is of the view that it would be desirable to provide some guidance concerning how the notice provision is to be interpreted and, in particular, whether or not the service provider had received any notification concerning the allegedly defamatory material. The Group was also of the view that a service provider should be able to investigate whether or not the allegedly defamatory material should be removed and that this should not be seen as a failure to act expeditiously under the Directive. It was felt that a

provision of this kind would be entirely consistent with relevant provisions in the European Convention on Human Rights.

### **Summary**

- **A new defence of innocent publication should be created which would replace, and be broader in scope, that the current common law defence of innocent dissemination.**
- **The defence should be available to those who can show that:**
  - **they were not the author, editor or publisher of the statement complained of;**
  - **they took reasonable care in relation to its publication, and**
  - **they did not know and had no reason to believe that what they did caused or contributed to the publication of a statement for which there would be liability in defamation.**
- **The terms author, editor and publisher should be defined in broad terms and should include broadcasters of live programmes.**
- **Statutory guidance should be given as to what constitutes reasonable care for the purposes of the defence and should include factors like the extent of the responsibility of the person for the content of the statement or the decision to publish it and the previous conduct or character of the author, editor or publisher.**
- **The position of operators of, or providers of access to, communications systems, in the context of internet publications, should be addressed specifically.**

### **Consent to publication**

51. At common law, a person has a complete defence to a defamation action if they can prove that the plaintiff consented to publication of the defamatory matter. In the interests of comprehensiveness, the Group recommended that the defence of consent be put on a statutory footing.

### **Summary**

- **The defence of consent to publication should be given a statutory basis.**

**Multiple publication**

52. The Group supported the implementation, in statutory form, of a rule whereby, in general, only a single cause of action would lie in respect of a multiple publication. As the law stands at present, every copy of a newspaper, for example, is a separate

publication to each recipient of the publication and there is, therefore, the undesirable potential for a multiplicity of actions in such circumstances. In keeping with its intention to ensure that any recommendations made were technology neutral, the Group considered that, in the context of multiple publication, a rule should be formulated to deal with proceedings for defamation based on publication by electronic means. It suggests a provision whereby such proceedings should also give rise to a single cause of action which, in this instance, would mean disregarding the number of times a particular publication might be accessed. The basic idea is that electronic and non-electronic publications should be treated equally insofar as the multiple publication rule was concerned.

### **Summary**

- **As a general rule, a person should have only a single cause of action in defamation in respect of a multiple publication.**
- **Where the defamation proceedings relate to an electronic publication it should be made clear that this rule also applies and that, in that context, the number of times a particular publication might be accessed should be disregarded.**

### **Limitation of defamation actions**

53. Under existing law the limitation period for libel actions is six years while the limitation period for slander actions is three years. The limitation period recommended by the Law Reform Commission in respect of defamation actions in general was three years. In reviewing the legislation in other jurisdictions, the Group noted that there is an increasing tendency to opt for even shorter periods of limitation. In New Zealand, the limitation period is two years whereas in New South Wales and the United Kingdom it is one year. The Group also noted that shorter limitation periods were often accompanied by safeguard measures whereby a court would have a discretion to allow defamation proceedings to be taken, notwithstanding the fact that the limitation period had expired. The Group does not see any particular merit in having a limitation period in defamation cases which is longer than one year and is of the view that, for the vast majority of cases, such a period should be ample. They are, however, persuaded of the benefits of allowing the court a measure of discretion in deciding whether or not an action may be brought notwithstanding the expiry of the one-year time limit. Accordingly, the Group recommends that a court may direct that the limitation period be disapplied in a case

where it is satisfied that any prejudice which the plaintiff might suffer if the action were not to proceed significantly outweighs any prejudice which the defendant might suffer if the action were to proceed. This would be subject to a general proviso that no defamation proceedings could be brought after the expiry of six years from the date on which the cause of action accrued. The provisions of the Statute of Limitations concerning what happens in respect of limitation periods where there is disability, fraud or mistake would, of course, continue to apply.

54. A final issue which the Group considered in this context was the issue of the time from when the limitation period should start to run. The traditional rule is that each individual publication gives rise to a separate cause of action, subject to its own limitation period. The impact of this rule is that defendants may face a potential liability many years after a publication has first been made and, in consequence, encounter inevitable difficulties when it comes to defending the action. The problem becomes more acute in respect of newspapers, or indeed, other material, which, increasingly, are being made available to the public via online archives. Applying the traditional rule in this instance effectively means that each “hit” on an online archive effectively amounts to a re-publication, with the limitation period running from the time the material was accessed.
55. The Law Commission in the United Kingdom has recently investigated the problems associated with this area of the law. They note that, under US law, a single edition of a newspaper or book is considered to be a “single publication”, however many copies are distributed. The implication of this rule in the limitation context is that the limitation period starts to run from the time of the first publication, notwithstanding the fact that copies may continue to be sold many years later. That rule also applies to website publications so that the limitation period in this context runs from the time when the relevant information was first placed on the website. The Commission conclude their initial investigation by recommending that further consideration be given to the issue, either through the adoption of a US style single publication rule, or, through a more specific defence that would apply to archive material in general.
56. The Group notes that limitation periods are designed to serve a number of functions. Plaintiffs must have adequate time to prepare their case while, at the same time,



defendants must not be disadvantaged when it comes to defending the action. There is also a general concern about the need to ensure that stale claims cannot be pursued. The Group finds itself persuaded of the merits of introducing a rule which will make it clear that a cause of action in a defamation case shall accrue from the date on which the matter complained of was first published. In the case of internet publications, that date should be the date on which the material in question was first made available. The Group is of the view that the present rule is inappropriate in a modern age and needs to be adapted to meet present day requirements. The Group also notes that the discretion which it recommends should apply where a plaintiff seeks to bring defamation proceedings after the one-year limitation period has elapsed should act to assist plaintiffs in the event that they become aware of the potentially defamatory material by way of a copy which is drawn to their attention more than one year after the original publication has taken place.

### **Summary**

- **As a general rule, the limitation period for defamation actions should be one year.**
- **In exceptional cases a court should have discretion to extend this period subject to an overall limitation period of six years.**
- **The limitation period should run from the date on which the matter complained of was first published and, in the case of publication by electronic means, that date should be the date on which the material was first made available.**

### **Provisions relating to criminal offences**

57. The Group noted that the Law Reform Commission had considered in some detail how best to deal with the admissibility or otherwise of criminal convictions or acquittals in the context of defamation proceedings and had made particular proposals in this regard. The Group agreed that it was desirable that this area of the law be clarified and recommends that in defamation proceedings the conviction or acquittal in the State by a court of competent jurisdiction of any person, whether or not they are a party to the proceedings, shall be evidence, unless the contrary is shown, of that conviction or

acquittal and of the facts upon which the conviction or acquittal was based.

### **Summary**

- **In defamation proceedings the conviction or acquittal in the State by a court of competent jurisdiction of any person, whether or not they are a party to the proceedings, shall be evidence, unless the contrary is shown, of that conviction or acquittal and of the facts upon which the conviction or acquittal was based.**

### **Meaning**

58. The Group notes that, in a number of jurisdictions, particularly the United Kingdom and New South Wales, there is statutory provision whereby a court may decide, as a preliminary issue, whether or not the allegedly defamatory matter is capable of bearing the meaning that is contended for by the plaintiff. If the matter is not capable of bearing such a meaning, the inevitable consequence is that the plaintiff's claim is dismissed in respect of that particular matter. A provision of this kind, which would of course be determined before a judge sitting alone, has the potential to weed out claims which might otherwise take up an excessive amount of court time. Accordingly, the Group recommends that a provision along the lines indicated be given statutory form in this jurisdiction.

### **Summary**

- **Provision should be made to enable a judge sitting alone to determine, as a preliminary issue, whether or not the matter complained of is reasonably capable of carrying the imputation pleaded by the plaintiff and, if it is, whether that imputation is reasonably capable of bearing a defamatory meaning.**

### **Criminal libel**

59. For the sake of completeness, the Group felt that it was appropriate to look briefly at this particular area of the law. The Group endorses the recommendations of the Law Reform Commission concerning the desirability of abolishing the common law offences of blasphemous libel, obscene libel and seditious libel. This is in a context where the Group has formed the view that matters such as blasphemy, sedition and indecency

should not be dealt with in the context of a defamation statute even if they should be criminalised in their own terms in another statutory vehicle.

60. In relation to the offence of criminal libel, the Group notes that it is prosecuted very rarely and that there are some who would take the view that, in any event, it is arguable that criminal sanctions are inappropriate in respect of defamatory statements which are best dealt with by way of a modern and comprehensive statute concerned exclusively with the civil law of defamation. Nonetheless, the Group inclines to the view that there may be some utility, albeit a limited one, in retaining the offence and here it would agree with the Law Reform Commission's recommendation that any such offence, if retained, needs to be restated in a more confined form. Accordingly, the Group has made a proposal for a new offence - the offence of publication of gravely harmful statements. In broad terms, the offence would arise where a person, without lawful authority or reasonable excuse:

- intentionally and with malice publishes or causes to be published a false statement in respect of a natural person, and
- that statement was calculated to gravely damage and has gravely damaged the reputation of that person, and
- was calculated to cause and has caused serious harm to the mind of the person who is the subject of the statement.

A person found guilty of such an offence would be liable on summary conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding twelve months or both. On conviction on indictment the penalty would be €15,000, or imprisonment for a term not exceeding five years or both. The Group also recommended that the court should have the power to impose a range of other penalties. For example, the court should have the power to direct a person to publish a statement to the effect that the statement originally published by them was false and gravely damaged the reputation of the other person and caused serious harm to the mind of that person. The court should also have the power to direct the seizure and disposal of any copies of the relevant publication. Equivalent powers should be available to the court where the publication in question is stored on an electronic system.

61. The Group notes that proposals along the lines of those contained in paragraphs 59 and 60 above have recently been given legislative form in the Australian Capital Territory.

### **Summary**

- **The present offence of criminal libel should be replaced by a new offence to be known as the offence of publication of gravely harmful statements.**
- **The key elements of the offence would be intentional and malicious publication of a false statement in respect of a natural person where that statement was calculated to gravely damage and has so damaged the reputation of that person and was calculated to cause and has caused serious harm to the mind of that person.**
- **On summary conviction a person would be liable to a fine not exceeding €2,000 or to imprisonment for a term not exceeding twelve months or both.**
- **On conviction on indictment the penalty would be €15,000 or imprisonment for a term not exceeding five years or both.**
- **The Court should also have a range of other powers at its disposal such as the ability to order the seizure and disposal of copies of the relevant publication and, in this context, there should be a particular provision to deal with publications which are stored electronically.**

### **Recommendations contained in the Law Reform Commission's Report on the Civil Law of Defamation which are not referred to elsewhere in this report**

62. As part of its work, the Group also reviewed the very detailed proposals advanced by the Law Reform Commission for the reform of the civil law of defamation. The outcome of that review is reflected in many of the recommendations of the Group which are outlined in preceding paragraphs. There was, however, a large number of Law Reform Commission proposals which the Group examined but upon which it saw no need to comment directly. For the most part this was because the Group agreed with the basic thrust of those proposals and took the view that the case for enshrining them in legislative form was compelling. Those proposals may be summarised as follows:

- the distinction between libel and slander should be abolished and defamation should be a civil wrong in which it should not be necessary to prove special damage.

- “defamation” should be defined for the purposes of the legislation.

- a claim in defamation based on a single publication should give rise to a single cause of action.
- an offer of an apology or the making of an apology by the defendant should not be construed as an admission of liability and it should be lawful for such apology or offer of apology to be used in mitigation of damages.
- the distinction between absolute and qualified privilege should be retained.
- there should be a statutory provision clarifying some of the occasions when absolute privilege would arise.
- there should be a statutory provision aimed at clarifying the elements of the common law defence of qualified privilege.
- fair and accurate reports of matters now covered by the Second Schedule to the Defamation Act, 1961 should continue to be privileged but the list of matters so covered should be revised, clarified and expanded.
- the defence of justification should be renamed the defence of truth and should be given statutory form.
- the conditions attaching to the granting of interlocutory injunctions restraining the publication of allegedly defamatory material should be set out in statutory form.
- the publisher of defamatory matter concerning a group or class of persons should be liable in defamation to an individual member of that group or class in certain circumstances.
- there should be a statutory provision that corporate bodies have a cause of action in defamation irrespective of whether financial loss is consequent, or likely to be consequent, upon the publication.
- where no action has been taken in a defamation action by a plaintiff within one year from the issue of the summons, a defendant should be entitled to apply to have the proceedings dismissed for want of prosecution.
- a cause of action in defamation should survive the death of the defamer or the alleged victim after publication, subject to various conditions.

### Summary of Recommendations

The Group recommends as follows:

- I. A defence, to be known as “the defence of reasonable publication” should be provided for which would be available where a defendant could show that the publication in question was made in the course of, or for the purposes of the discussion of some subject of public interest, the public discussion of which was for the public benefit (paragraphs 6 to 15 of report).
- II. Juries should continue to have a role in assessing damages in the High Court. However, the parties to the proceedings should be able to make submissions to the court, and address the jury, concerning damages. Furthermore, the judge in such proceedings would be required to give directions to the jury on this point (paragraphs 16 to 18 of report).
- III. The jurisdiction of the Circuit Court in defamation cases should be set at €50,000 (paragraph 19 of report).
- IV. There should be a clear statutory statement to the effect that, in a defamation appeal from the High Court, the Supreme Court could substitute its own assessment of damages for that awarded in the lower court (paragraph 20 of report).
- V. There should be no substantive change in the law concerning the presumption of falsity. However, all plaintiffs in defamation proceedings should, in future, have to file, within a specific period of time, an affidavit which would verify the particulars of their claim. Failure to file such an affidavit could, in certain circumstances, result in the claim being struck out (paragraphs 21 and 22 of report).
- VI. A Press Council should be established, on a statutory basis, which would have a number of functions, including the preparation of a Press Code of Conduct and the investigation of complaints in respect of alleged breaches of that Code (paragraphs 23 to 38 of report).
- VII. Any proposed legislation should only apply to causes of action which accrue after it comes into operation (paragraph 39 of report).
- VIII. The changes already proposed which would see defendants in defamation actions being able to make lodgments in court regardless of whether liability is admitted or denied should be accompanied by an additional provision which would permit a plaintiff, should they so wish, to inform the court that they have accepted a lodgment and also to inform the court of the consequences for them of the resolution of the defamation proceedings (paragraph 40 of report).
- IX. The tort of malicious falsehood should be retained but should be restated in a clearer and more simplified manner (paragraph 41 of report).



- X. A new fast-track procedure should be introduced so that, in an appropriate case, it would be possible for either of the parties to apply to the court to have a defamation action disposed of in a summary manner by a judge sitting alone. The remedies encompassed by a procedure of this kind should not include damages (paragraph 42 of report).
- XI. The circumstances in which aggravated damages may be awarded in defamation proceedings should be clarified (paragraph 43 of report).
- XII. The defence of fair comment should be re-named the defence of honest opinion and its scope clarified (paragraph 44 of report).
- XIII. The ability to make an offer of amends in cases of unintentional defamation (now provided for in section 21 of the Defamation Act, 1961) should be retained but in a more modern form (paragraph 45 of report).
- XIV. A new defence, to be known as “the defence of innocent publication” should be provided for. This would replace the common law defence of innocent dissemination and should not be confined to distributors only but should embrace a broader category of person, for example, printers and broadcasters. Specific provision should be made to deal with internet service providers (paragraphs 46 to 50 of report).
- XV. The defence of consent should be put on a statutory footing (paragraph 51 of report).
- XVI. The implementation in statutory form of a rule whereby, in defamation proceedings, only a single cause of action would lie in respect of a multiple publication, should deal explicitly with publication by electronic means (paragraph 52 of report).
- XVII. The limitation period in respect of defamation proceedings should be one year. However, the court should have a measure of discretion to disapply this limitation period subject to a general proviso that no defamation proceedings could be brought after the expiry of six years from the date on which the cause of action accrued (paragraphs 53 to 55 of report).
- XVIII. A statutory rule should be introduced which would make it clear that a cause of action in defamation accrues from the date on which the matter complained of was first published and, in the case of an electronic publication, from the date on which the matter complained of was first made available - in effect a “single publication” rule should be introduced for defamation proceedings (paragraph 56 of report).
- XIX. Provision should be made to enable a court to determine, as a preliminary issue, whether or not the allegedly defamatory material is capable of bearing the meaning that is contended for by a plaintiff (paragraph 57 of report).
- XX. The common law offences of blasphemous libel, obscene libel and seditious libel should be abolished (paragraph 59 of report).
- XXI. The offence of criminal libel should be abolished and replaced by a narrower offence to be known as the offence of publication of gravely harmful statements (paragraphs 60 and 61 of report).

- XXII. Various other recommendations of the Law Reform Commission concerning, for example, the making of an apology and the rationalisation of the defences of absolute and qualified privilege, should be enshrined in legislative form (paragraph 62 of report).
- XXIII. As a consequence of the above recommendations, the Defamation Act, 1961 should be repealed in its entirety.

**Appendix II**

**Members of the Legal Advisory Group on Defamation**

Hugh Mohan SC, Chairperson

Paula Mullooly, Solicitor, McAleese & Company

Eoin O'Dell, Registrar, School of Law, Trinity College, Dublin

Sineád McSweeney, Special Adviser to the Minister

Regina Terry, Department of Justice, Equality and Law Reform

Mary Joy and Trevor Noonan, Department of Justice, Equality and Law Reform, acted as Secretary to the Group.

## **General Scheme of a Defamation Bill, 2003**

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- Head 33. Publication by another person.
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- Head 35. Agreements to indemnify against liability for defamation.
- Head 36. Dismissal for want of prosecution.
- Head 37. Limitation of defamation actions.
- Head 38. Survival of actions (amendment of Civil Liability Act, 1961).
- Head 39. Provisions relating to criminal offences.
- Head 40. Jurisdiction of courts.
- Head 41. Appeals in defamation actions.
- Head 42. Meaning.
- Head 43. Amendment of other enactments.

## **PART 7**

### **Press Council**

- Head 44. Interpretation of this Part.
- Head 45. Press Council.
- Head 46. Overriding principles.
- Head 47. Functions.
- Head 48. Membership of Council and Quorum.
- Head 49. Chairperson.
- Head 50. Vice-chairperson.
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- Head 52. Staff.
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- Head 54. The Press Code of Conduct.
- Head 55. Compliance with code.
- Head 56. Persons entitled to complain.
- Head 57. Form of complaint and waiver
- Head 58. Procedures to be followed in investigating a complaint.
- Head 59. Procedures to be followed when a decision on the complaint has been reached.
- Head 60. Publication of decisions.
- Head 61. Right of Council to apply to the Circuit Court.

- Head 62. Inability of Council member to act.
- Head 63. Commencement provision in respect of Heads 56 to 61.
- Head 64. Annual Report of the Press Council.

## **PART 8**

### **Criminal Offences**

- Head 65. Abolition of common law libel offences.
- Head 66. Offence of publication of gravely harmful statements.
- Head 67. Penalties on conviction of publication of gravely harmful statements.

## **SCHEDULE**

### **Part 1 Preliminary and General**

#### **1. Short title and Commencement, etc.**

Provide that

- (1) This Act may be cited as the Defamation Act, 2003.
- (2) This Act shall come into operation on the day that is 1 month after the date of its passing.
- (3) This Act shall not apply to a cause of action which accrued before this Act comes into operation.

**Note:** these are standard provisions. Given the extent of the changes which are being proposed, it is suggested that the Act should only apply to a cause of action which accrues after it comes into operation.



## 2. **Interpretation**

Provide that

(1) In this Act,

"declaratory judgment" has the meaning assigned to it by *Head 12*.

"defamation" has the meaning assigned to it by *Head 6*.

"defamatory matter" has the meaning assigned to it by *Head 6*.

"defence of qualified privilege" has the meaning assigned to it by *Head 20*.

"defence of truth" has the meaning assigned to it by *Head 18*.

"medium of communication" includes a newspaper and a broadcast by radio or television or by other electronic means of communication.

"proceedings for defamation" includes an action for damages under *Head 40*, an application for a declaratory judgment under *Head 12* and an application for summary relief under *Head 14*.

(2) In this Act -

(a) a reference to a section is to a section of this Act, unless it is indicated that reference to some other enactment is intended;

(b) a reference to a subsection is a reference to the subsection of the section in which the reference occurs, unless it is indicated that reference to some other section is intended;

(c) a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by any subsequent enactment.

**Note:** this is a standard interpretation section.

**3. Repeal**

Provide that

(1) The Defamation Act, 1961 is hereby repealed.

**Note:** this provision is self-explanatory. Part 8 of this Scheme provides a new statutory basis for criminal libel which is currently dealt with in Part II of the Defamation Act, 1961.

**Part 2**

**Causes of Action**

**4. Abolition of distinction between libel and slander**

Provide that

- (1) The distinction between libel and slander in civil proceedings subsisting immediately before this Act comes into operation is hereby abolished.
- (2) The following Acts are hereby amended by the substitution in the section specified of the word "defamation" for the words "libel" or "slander", as the case may be, in each place where they occur:
  - (a) section 77A(i) of the Courts of Justice Act 1924 (inserted by section 4 of the Courts Act 1991);
  - (b) section 49(3) of the Statute of Limitations, 1957 and
  - (c) sections 11(5) and 14(6) of the Civil Liability Act 1961.

**Note:** this provision is self-explanatory

5. **Defamation actionable without proof of special damage**

Provide that

There shall be a cause of action in defamation which, subject to the provisions of this Act, shall be a civil wrong, actionable at the suit of the person defamed, in which it shall not be necessary to prove special damage.

**Note:** this provision is self-explanatory

**6. Definition of defamation**

Provide that

For the purpose of this Act,

- (a) defamation is the publication by any means of defamatory matter concerning the plaintiff;
- (b) defamatory matter is matter which tends to injure the plaintiff's reputation in the eyes of reasonable members of the community;
- (c) defamatory matter concerns the plaintiff if it would reasonably be understood to refer to the plaintiff;
- (d) subject to paragraph (e), publication is the communication of defamatory matter to at least one person other than the plaintiff;
- (e) publication does not arise where the defamatory matter is communicated to the plaintiff in circumstances where it could not be reasonably anticipated that the matter would be communicated to a third person.

**Note:** this Head defines the essential ingredients of defamation.

## 7 **Verifying Affidavit**

Provide that

- (1) Within two months of the proceedings for defamation being instituted, the plaintiff shall cause to be sworn and filed an affidavit verifying the particulars of the plaintiff's claim.
- (2) Failure to comply with the provisions of *subhead (1)* shall result in the strikeout of the proceedings on the application of the defendant
- (3) The time limit as set out in *subhead (1)* may be extended by leave of the court.

**Note:** the purpose of this Head is to provide a mechanism whereby a plaintiff is obliged to verify the particulars of their individual claim within a specific timeframe which may be extended at the discretion of the court. The contents of the verifying affidavit could also form the subject matter for cross-examination of the plaintiff.

**8. Single publication to constitute one cause of action**

Provide that

Notwithstanding any rule of law subsisting immediately before this Act comes into operation, proceedings for defamation based on a single publication shall give rise to a single cause of action in defamation no matter how many imputations the publication contains.

**Note:** this Head abolishes the existing rule of law under which a legal innuendo gives rise to a separate and distinct cause of action from that given by words which are defamatory in both their ordinary and natural meaning.

## 9. **Offer of apology**

Provide that

- (1) In proceedings for defamation, evidence that the defendant made or offered an apology to the plaintiff in respect of the matter complained of shall not be construed as an admission of liability in respect of the said matter.
- (2) Subject to *subhead (3)*, in proceedings for defamation it shall be lawful for the defendant to give evidence in mitigation of damage that he or she made or offered an apology to the plaintiff in respect of the matter complained of, either before the commencement of the proceedings or, where the proceedings were commenced before there was an opportunity to do so, as soon after the commencement as he or she could reasonably have been expected to do so.
- (3) Where in proceedings for defamation the defendant intends to give evidence that he or she made or offered an apology to the plaintiff, he or she shall, at the time of filing or delivering the defence in the action, give notice in writing to the plaintiff of that intention.
- (4) A notice under *subhead (3)* shall not be construed as an admission of liability in respect of the matter complained of.

**Note:** this Head aims to state in the clearest possible terms that an offer of apology by a defendant to a plaintiff is not to be construed as an admission of liability.



**10. Lodgment in court**

Provide that

- (1) The defendant in proceedings for defamation may, upon notice to the plaintiff, lodge in court with the defence a sum of money in satisfaction of the plaintiff's claim in the proceedings, and such a lodgment may be made with an admission or denial of liability.
- (2) Money paid into court under this section in proceedings commenced in the High Court shall be deemed to be money paid into court under Order 22, rule 1 of the Rules of the Superior Court or under any equivalent rule which is for the time being in force.
- (3) Money paid into court under this section in proceedings commenced in the Circuit Court shall be deemed to be money paid into court under Order 15, rule 9 of the Rules of the Circuit Court or under any equivalent rule which is for the time being in force.
- (4) The plaintiff at his or her suit may
  - (a) accept the lodgment in accordance with the rules applicable to the court in which the proceedings are being maintained for the time being, or
  - (b) accept the lodgment and file in court a motion on notice in the action informing the court of the acceptance of the lodgment and of the consequences for the plaintiff of the resolution of the proceedings.

**Note:** the particular effect of this Head is to bring defamation proceedings into line with other actions for damages by allowing the defendant to lodge in court with the defence a sum of money in satisfaction of the plaintiff's claim regardless of whether liability is admitted or denied. Subhead (4) is intended to facilitate a plaintiff who may wish to ensure that some measure of public recognition attaches to the fact that the defendant was willing to settle the case before the trial of the action was concluded.

**11. Malicious falsehood**

Provide that

- (1) In proceedings for slander of title, slander of goods or other malicious falsehood, it shall be necessary for the plaintiff to show that the matter complained of:
  - (a) was false,
  - (b) was published maliciously, and
  - (c) referred to the plaintiff, or to the property of the plaintiff, or to an office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication.
- (2) In such proceedings, it shall also be necessary for the plaintiff to show either:
  - (a) that special damage has followed as a direct and natural result of the publication of the matter complained of, or
  - (b) that such publication was calculated to cause and was likely to cause pecuniary damage either to the plaintiff or in respect of any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication.

**Note:** this Head is intended as a replacement for section 20 of the Defamation Act 1961. The provision clarifies both the basis of the tort and the circumstances where special damage is, or is not, required to be shown.

### Part 3

#### Remedies other than damages

#### 12. Application for declaratory judgment

Provide that

- (1) A person claiming to be the subject of a statement in allegedly defamatory matter may bring proceedings for an order that the statement is false and defamatory. Such order shall be known (and is in this Act referred to) as a "declaratory judgment".
- (2) A claim for an order under this Head shall not be considered by the court unless the court is satisfied that the plaintiff made an adequate, sufficient and timely request for an adequate, sufficient and timely apology, correction or retraction in respect of the matter complained of and that the defendant failed to make such an apology, correction or retraction.
- (3) No damages shall be awarded in proceedings for a declaratory judgment.
- (4) Any privilege or defence existing at common law, under statute or by virtue of the Constitution shall apply to proceedings for a declaratory judgment in like manner as they apply to other proceedings for defamation.
- (6) A plaintiff who brings an action under *subhead (1)*, shall not, in respect of the statement the subject of the action, be entitled to assert any other claim or have any other cause of action arising out of the same publication.
- (7) An application for an order under *subhead (1)* shall be made in either the High Court or the Circuit Court and where the application is made to the High Court it shall be heard by a judge sitting alone.
- (8) Any application for relief under this section shall be commenced by way of originating notice of motion with grounding affidavit and the court shall give directions in the proceedings.

**Note:** this Head provides a new civil remedy for defamation to be known as a declaratory judgment. It is intended to provide an expeditious avenue of redress where damages are not being sought.

**13. Correction order**

Provide that

- (1) In proceedings for defamation, the court, in accordance with this section, may, where the plaintiff so claims, after a finding of defamation, grant to the plaintiff an order which may declare the defamatory matter to be false, direct the correction of the defamatory matter, or both. Such an order shall be known as a correction order.
- (2) Where the court grants a correction order it may direct in the order the publication by the defendant of an appropriate correction of the matter complained of and may specify the contents of the correction.
- (3) Where in a correction order the court directs the publication of a correction, it may give directions concerning the date, time, form, extent and manner of publication of the correction and, unless the plaintiff otherwise requests, shall by the direction ensure, so far as is practicable, that the correction will reach persons who were the recipients of the defamatory matter.

**Note:** this Head provides for a new remedy - a correction order - which, unlike the declaratory judgment, is generally envisaged as an additional remedy for a plaintiff who is also interested in obtaining an award of damages. This provision represents a streamlining of the original Law Reform Commission proposal which envisaged two separate and distinct orders - a correction order and a declaratory order - depending on the situation towards which the order was to be directed.

#### 14. **Summary disposal of claim**

Provide that

- (1) A party to defamation proceedings may apply to the court by way of motion for the court to:
  - (a) give judgment for the plaintiff and grant him or her summary relief if it appears to the court that there is no defence to the claim which has a realistic prospect of success, and there is no other reason why the claim should be tried, or
  - (b) dismiss the plaintiff's claim if it appears to the court that the claim has no realistic prospect of success and there is no reason why it should be tried.
- (2) For the purposes of *subhead (1)* in considering whether there is a reason whether the claim should be tried or not, the court shall have regard to all the circumstances of the case and whether it is justifiable in such circumstances that the matter should proceed to a plenary hearing.
- (3) For the purposes of this Head "summary relief" includes
  - (a) a declaratory judgment,
  - (b) a correction order, or
  - (c) an order restraining the defendant from publishing or further publishing the matter complained of.
- (4) Proceedings under this Head shall be heard and determined without a jury.

**Note:** this Head is intended to provide a mechanism whereby defamation proceedings may be disposed of in a summary fashion and, where it is the plaintiff who succeeds in the application for summary relief, a variety of remedies, excluding damages, may be availed of.

**15. Injunction restraining publication**

Provide that

- (1) Where in the course of proceedings for defamation the plaintiff seeks an interlocutory injunction restraining publication of the matter complained of:
  - (a) the court shall grant such an injunction only if the matter is clearly defamatory and any defence raised to the action is likely to fail;
  - (b) the court shall not refuse to grant such an injunction by reason only of the fact that the defendant has stated his intention to plead a defence to the action, but shall assess what weight, if any, to attach to such an assertion.
- (2) Where an interlocutory injunction has been granted to restrain publication of an allegedly defamatory matter, the court shall not prohibit the reporting in any medium of communication of the fact that the injunction has been granted.

**Note:** the purpose of this Head is to set out the grounds on which a court may grant or refuse an injunction sought by a plaintiff in the course of defamation proceedings which would have the effect of restraining publication of the allegedly defamatory matter.

## Part 4

### Damages

#### **16. Provisions relating to the award of damages**

Provide that

In proceedings for defamation, the following provisions shall have effect

- (1) It shall be lawful for the parties to the proceedings to make submissions to the court and to address the jury, if any, on the matter of damages.
- (2) Where proceedings are tried by a judge and jury in the High Court, the trial judge shall give directions to the jury on the matter of damages.
- (3) In making an award of general damages in proceedings for defamation, regard shall be had to all the circumstances of the case including, but not limited to:
  - (a) the nature and gravity of any allegation in the defamatory matter;
  - (b) the means of publication of the defamatory matter, including the durable or other nature of those means;
  - (c) the extent to which the defamatory matter was circulated;
  - (d) the extent to which reasonable care was exercised by the defendant in attempting to ascertain the truth of any allegation of fact prior to the publication of the defamatory matter which contains such an allegation;
  - (e) the fact that the defendant made or offered an adequate, sufficient and timely apology, correction or retraction to the plaintiff in respect of the defamatory matter;
  - (f) the fact that the defendant made an offer of amends under *Head 26* whether or not it was relied on as a defence;
  - (g) the importance to the plaintiff of his or her reputation in the eyes of particular or all recipients of the publication;
  - (h) the extent to which the plaintiff caused or contributed to, or acquiesced in, the publication of the defamatory matter;
  - (i) the evidence received concerning the reputation of the plaintiff;
  - (j) in an action in which the defence of truth was pleaded and where the defendant has proved the truth of part but not the whole of

the matters contained in the publication, the whole of the publication in which the matter complained of was contained and the extent to which the defendant has proved the truth of its contents irrespective of whether the plaintiff's claim relates to the whole or part only of the said publication;

- (k) the fact that, in an action where the defence of qualified privilege has been pleaded in accordance with the provisions of *Head 21*, the defendant has acceded to the request of the plaintiff to publish a reasonable statement by way of explanation or contradiction, and
  - (l) any injunction that the court has granted and any injunction or correction order that the court proposes to grant or, where the proceedings are before a jury, would propose to grant in the event that there is a finding of defamation.
- (4) Notwithstanding anything in *subhead (3)(c)*, in proceedings for defamation involving words innocent on their face, but which became defamatory by reason of facts known only to some recipients of the medium of communication containing the defamatory matter, the publication of that matter shall be taken to have been made only to those recipients.
  - (5) For the purposes of mitigating damages under *subhead(3)(i)*, the defendant may introduce any matter, whether of a general or of a particular nature, which is relevant to the plaintiff's reputation.
  - (6) For the purpose of mitigating damages under *subhead (3)*, the defendant may give evidence that the plaintiff has recovered damages, or has brought actions for damages, in proceedings for defamation in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.
  - (7) The court may award damages in a defamation action in respect of financial loss caused by the publication of the defamatory matter.

**Note:** this Head maintains the status quo with regard to defamation trials before a jury insofar as it is for the jury to determine the amount of damages to be awarded in the event that they find in favour of the plaintiff. However, in a departure from current practice, provision is made for the parties to the proceedings to make submissions concerning damages. In addition, a duty is imposed on the trial judge to give directions to the jury on the matter of damages. A non-exhaustive list of the factors to which regard is to be had in making an award of general damages is also set out in this Head.



17. **Aggravated damages and exemplary or punitive damages**

Provide that

- (1) Aggravated damages may be awarded in proceedings for defamation only where the defendant has conducted his defence in a manner which was calculated to aggravate and which has aggravated the injury to the plaintiff's reputation.
  
- (2) Exemplary or punitive damages may be awarded in proceedings for defamation in the following cases only:
  - (a) where the defendant intended to publish defamatory matter to a person other than the plaintiff, knowing that the matter would be understood by that other person to refer to the plaintiff, and
  
  - (b) where the defendant knew of the falsity of the matter or was recklessly indifferent as to its falsity.

**Note:** this Head retains the existing jurisdiction which the court has to award damages of the kind specified but limits the circumstances in which the power may be exercised to the specific instances set out in the Head itself.

**Part 5****Defences****18. Truth**

Provide that

- (1) In proceedings for defamation, the defence known immediately before this Act comes into operation as the defence of justification shall be known (and is in this Act referred to) as "the defence of truth".
- (2) In order to establish the defence of truth, the defendant shall prove that the matter complained of was in substance either true or not materially different from the truth.
- (3) In proceedings for defamation brought in respect of the whole or any part of the matter published, the defendant may allege and prove the truth of any statement or statements contained in that matter, and the defence of truth shall be established if that matter, taken as a whole, does not materially injure the plaintiff's reputation, having regard to any such allegation proved to be true in whole or in part.

**Note:** this Head restates with amendments the existing law relating to the defence of justification (now renamed the defence of truth).

## 19. **Absolute privilege**

Provide that

- (1) It shall be a defence, to be known (and in this Act referred to) as "the defence of absolute privilege" , in proceedings for defamation for the defendant to show that the matter complained of consisted of a statement made on an occasion of absolute privilege.
- (2) Without prejudice to any other enactment or rule of law, occasions of absolute privilege shall include-
  - (a) any communication made in either House of the Oireachtas by a member of either House of the Oireachtas;
  - (b) any report, official or otherwise, published in a medium of communication, of a communication referred to in *paragraph (a)*;
  - (c) any judgment of any court of competent jurisdiction;
  - (d) any statement made by a judge or other person performing a judicial function, who is not performing a purely ministerial function or knowingly acting without jurisdiction, where the statement has some relation to the matter before him or her;
  - (e) any statement by any party, witness, legal representative or juror made in the course of judicial proceedings, where the statement has some relation to those proceedings;
  - (f) any statement made in the course of proceedings, however informal, which involve the exercise of limited functions and powers of a judicial nature authorised by Article 37 of the Constitution, where the statement has some relation to those proceedings;
  - (g) a fair and accurate report of proceedings publicly heard before or judgment made public by any court established by law and exercising judicial authority within the State or within Northern Ireland;
  - (h) a fair and accurate report of proceedings publicly heard before or judgment made public by any international court or international arbitral tribunal established by an international agreement to which the State is a party including (without prejudice to the generality of the expression) the Court of Justice or any court attached to that Court, the European Court of Human Rights and the International Court of Justice;
  - (i) proceedings before subcommittees of either House of the Oireachtas;
  - (j) any statement made in the course of proceedings before a Tribunal established by the Tribunals of Inquiry Act, 1921, as amended,

where the statement has some relation to the proceedings;

- (k) any report of any such Tribunal;
  - (l) any decision made under *Head 58* of this Act or any report made under *Head 64* of this Act, and
  - (m) the report of any inquiry carried out pursuant to any Ministerial, legislative, executive, judicial or constitutional authority within the State or within Northern Ireland.
- (3) In this Head "communication" includes communications made orally, in writing, electronically or otherwise.
- (4) Section 2 of the Committees of the Houses of the Oireachtas (Privilege and Procedure) Act, 1976 is hereby amended by the substitution of the following subsection for subsection (1):
- "2 (1) A member of either House of the Oireachtas shall not, in respect of any communication, whether oral, written or otherwise, made in or before a committee, be amenable to any court or any authority other than the House or the Houses of the Oireachtas by which the committee was appointed.";
- by the substitution of the following subsection for subsection (2)(c):
- "(2) (c) the communications made in a committee by the members, advisers, officials and agents of the committee, whether oral, written or otherwise," and
- by the insertion of the word "absolutely" before "privileged" in subsection (2).
- (5) Section 12 of the Arbitration (International Commercial) Act, 1998 shall apply, with any appropriate modifications, to arbitrations which take place pursuant to the Arbitration Acts 1954 to 1980 or to any other enactment.

**Note;** this Head specifies a number of occasions where absolute privilege arises and is, for the most part, declaratory of the common law position in relation to these matters. The Head does not purport to be exhaustive. Of particular note are the provisions relating to fair and accurate reports of judicial proceedings, to proceedings before subcommittees of either House of the Oireachtas and to the proceedings and reports of Tribunals.

## 20. Qualified Privilege

Provide that

- (1) It shall be a defence, to be known (and in this Act referred to) as "the defence of qualified privilege", in proceedings for defamation for the defendant to show that:
  - (a) the publication of the matter complained of was made to a particular person or group of persons only,
  - (b) subject to *subhead (2)*, the recipient or recipients had a duty to receive, or an interest in receiving, information of the kind contained in the matter complained of, and
  - (c) the publisher had a duty to communicate, or an interest in communicating, information of the kind contained in the matter complained of.
- (2) The defence of qualified privilege shall not fail by reason only of the fact that the recipient or recipients had no actual duty to receive, or no actual interest in receiving information of the kind contained in the matter complained of provided that a reasonable person would have believed that the recipient or recipients had such a duty or interest.
- (3) Persons shall not be regarded as constituting a particular group for the purposes of *subhead (1)* by reason only of the fact that they were recipients of particular published matter.
- (4) In this Head -
  - "duty" includes a legal, social, moral or other similar duty, and
  - "interest" includes a legal, social, moral or other similar interest.

**Note:** this Head provides a statutory basis for the defence of qualified privilege and preserves the status quo whereby the media are excluded from the scope of this defence. It is proposed however that the media will be able to avail of a new and related defence - the defence of reasonable publication.

## 21. Qualified privilege of certain reports, etc.

Provide that

- (1) Subject to the provisions of this head, the defence of qualified privilege shall also apply to the publication of a report or other matter mentioned in the Schedule to this Act.
- (2) Where in proceedings for defamation the matter complained of is a report or other matter mentioned in *Part II* of the Schedule to this Act, the provisions of *subhead (1)* shall not apply if it is proved that the defendant has been requested by the plaintiff to publish, in the same medium of communication in which the matter complained of was originally published, a reasonable statement by way of explanation or a contradiction, and has refused or neglected to do so or has done so in a manner not adequate or not reasonable having regard to the circumstances of the case.
- (3) Nothing in this head shall be construed
  - (a) as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit, or
  - (b) as limiting or abridging any privilege subsisting apart from this section.
- (4) The Minister may, by order, amend the Schedule to this Act to make provision for the application of the defence of qualified privilege to the publication of a report or other matter which is not at present mentioned in the aforesaid Schedule.

**Note:** this Head is intended to replace and update section 24 of the Defamation Act, 1961 and the associated Second Schedule. A new feature is the proposal that the Schedule might be amended by Ministerial order so as to obviate the need for primary legislation should it emerge that it was appropriate to apply the statutory defence to reports other than those so far identified.

## 22. **Forfeiture of qualified privilege**

Provide that

- (1) The defence of qualified privilege in *Heads 20 and 21* shall be forfeited in any of the following circumstances:
  - (a) where the defendant did not believe the matter complained of to be true;
  - (b) where the publication by the defendant was actuated by spite, ill-will or improper motive;
  - (c) where the matter complained of bore no relation to the purpose for which the privilege subsists;
  - (d) where the manner and extent of publication of the matter complained of exceeded what was reasonably sufficient in the circumstances for the occasion.
- (2) The burden of proof shall lie on the plaintiff to show that the defendant has forfeited the privilege in accordance with *subhead (1)*.
- (3) Where defamation proceedings are brought against more than one defendant in circumstances where, pursuant to this section, the defence of qualified privilege applies, forfeiture of the privilege by any of the defendants in any of the circumstances specified in *subhead (1)* shall not result in forfeiture of the privilege by any other defendant, unless that other was at the time of publication vicariously liable for a tort committed by the first - mentioned defendant.
- (4) Section 11(4) of the Civil Liability Act, 1961, is hereby repealed.

**Note:** this Head deals with the circumstances in which a defendant loses the defence of qualified privilege and related matters.

## 23 **Reasonable Publication**

Provide that

- (1) It shall be a defence, to be known (and in this Act referred to) as "the defence of reasonable publication", in proceedings for defamation for the defendant to show that the publication of the matter complained of was made in the course of, or for the purposes of, the discussion of some subject of public interest the public discussion of which was for the public benefit and, in all the circumstances of the case, it was reasonable to publish the matter complained of.
- (2) In determining for the purposes of *subhead (1)* whether it was reasonable to publish the matter complained of, a court may take into account any or all of the following matters and such other matters as the court considers relevant:
  - (a) the extent to which the matter complained of is of public concern,
  - (b) the extent to which the matter complained of concerns the performance of the public functions or activities of the person,
  - (c) the seriousness of any defamatory imputations carried by the matter complained of,
  - (d) the context and content (including the language used) of the matter complained of,
  - (e) the extent to which the matter complained of distinguishes between suspicions, allegations and proven facts,
  - (f) whether it was necessary in the circumstances for the matter complained of to be published expeditiously,
  - (g) the sources of the information in the matter complained of and the integrity of those sources,
  - (h) whether the matter complained of contained the substance of the plaintiff's side of the story and, if not, whether a reasonable attempt was made by a publisher to obtain and publish a response from that person,
  - (i) any other steps taken to verify the information in the matter complained of;



(j) the matters referred to in *Head 55(4)*.

- (3) The defence of reasonable publication shall be forfeited where the publication by the defendant was actuated by spite, ill-will or improper motive.

**Note:** this Head introduces a new defamation defence into Irish law - the defence of reasonable publication. It is essentially designed to facilitate public discussion where there is both a benefit and an interest in such discussion taking place. The defence is subject to the criterion of reasonableness and a range of matters - which are non-exhaustive - are specified which a court may take into account in determining whether or not the defence is made out. There is also a clear statement to the effect that the defence is forfeited where the publication by the defendant is actuated by spite, ill-will or other improper motive.

## 24. **Honest opinion**

Provide that

- (1) In proceedings for defamation, the defence which immediately before the commencement of this Act was known as the defence of fair comment shall be known (and is in this Act referred to) as "the defence of honest opinion".
- (2) In order to establish the defence of honest opinion, the defendant shall prove each of the following:
  - (a) that the matter complained of constituted his or her honest opinion;
  - (b) that the opinion was supported by facts either:
    - (i) set out in the publication containing the matter complained of, or
    - (ii) expressly or by implication referred to in that publication provided such facts were known or might reasonably be assumed to be known to the persons to whom the publication was made;
  - (c) the truth of sufficient facts to support the opinion;
  - (d) that the opinion was given on a matter of public interest, and
  - (e) where the defendant was the author of the matter containing the opinion, that the opinion expressed was an opinion honestly held by him, or, where the defendant was not the author of the matter, that the defendant believed that the opinion expressed was an opinion honestly held by its author.
- (3) Where a defendant shows -
  - (a) that defamatory matter published was opinion based on a statement of facts published previously on an occasion of either absolute privilege or in the circumstances outlined in *Head 21*, and
  - (b) that the defendant did not adopt the statement of fact as being true,

failure by the defendant to show the truth of the statement of fact on which the opinion is based shall not deprive the defendant of the defence of honest opinion.

- (4) Where defamatory matter is published jointly by more than one person, no defendant shall fail in a defence of honest opinion by reason only that the comment did not represent the genuine opinion of the other person, unless the first-mentioned defendant was at the material time vicariously liable for a tort committed by that other person.

**Note:** this Head provides for a defence of honest opinion which is intended to replace the defence now known as fair comment.

**25. Matters to be considered in distinguishing between fact and honest opinion**

Provide that

- (1) In determining whether any publication of defamatory matter is a statement of fact or a statement of opinion the court shall have regard to the following matters;
  - (a) the extent to which the statement is capable of objective verification or proof,
  - (b) the extent to which the statement was made in a context in which it was likely to have been reasonably understood as opinion or hyperbole, and not as a statement of fact, and
  - (c) the nature of the language used (including its common meaning) and the extent to which qualifying or cautionary language or a disclaimer was employed.

**Note:** this Head sets out the criteria to be considered by a court when facts and comments are to be distinguished in defamation proceedings.

**26. Offer of amends for unintentional defamation**

Provide that

- (1) A person who has published a statement alleged to be defamatory of another may offer to make amends under this section.
- (2) An offer to make amends-
  - (a) must be in writing,
  - (b) must be expressed to be an offer to make amends under section 26 of the Defamation Act 2003 and
  - (c) must state whether it is a qualified offer and, if so, set out the defamatory meaning in relation to which it is made.
- (3) An offer to make amends under this section is an offer-
  - (a) to make a suitable correction of the statement complained of and a sufficient apology to the aggrieved party,
  - (b) to publish the correction and apology in a manner that is reasonable and practicable in the circumstances, and
  - (c) to pay to the aggrieved party such compensation (if any), and such costs, as may be agreed or determined to be payable.

The fact that the offer is accompanied by an offer to take specific steps does not affect the fact that an offer to make amends under this section is an offer to do all things mentioned in *paragraphs (a) to (c)*.

- (4) An offer to make amends under this section may not be made by a person after serving a defence in defamation proceedings brought against him or her by the aggrieved party in respect of the publication in question.
- (5) An offer to make amends under this section may be withdrawn before it is accepted; and a renewal of an offer which has been withdrawn shall be treated as a new offer.

**Note:** this Head and the subsequent two Heads are intended to update the existing defence of unintentional defamation which is at present provided for in section 21 of the Defamation Act, 1961.

**27. Consequences of accepting an offer to make amends**

Provide that

- (1) If an offer to make amends under *Head 26* is accepted by the aggrieved party, the following provisions apply.
- (2) If the parties agree on the steps to be taken in fulfilment of the offer, the aggrieved party may apply to the High Court, or if proceedings in respect of the matter complained of have been taken in the Circuit Court, in that Court, for an order that the other party fulfil his or her offer by taking the steps agreed.
- (3) If the parties do not agree on the steps to be taken by way of correction, apology and publication, the party who made the offer may take such steps as he or she thinks appropriate, and may, in particular, make the correction and apology by a statement in open court in terms approved by the court, and give an undertaking to the court as to the manner of their publication.
- (4) If the parties do not agree on the amount to be paid by way of compensation, it shall be determined by the court on the same principles as damages in defamation proceedings and the court shall take account of any steps taken in fulfilment of the offer and (so far as not agreed between the parties) of the suitability of the correction, the sufficiency of the apology and whether the manner of their publication was reasonable in the circumstances, and may reduce or increase the amount of compensation accordingly.
- (5) If the parties do not agree on the amount to be paid by way of costs, it shall be determined by the court on the same principles as costs awarded in court proceedings.
- (6) Where a person accepts an offer by one person to make amends, any cause of action against another person in respect of the same publication shall only be taken or continued by leave of the Court and shall not be granted unless the Court is of the view that in all the circumstances of the case it is just and proper to do so.

**28. Consequences if the offer to make amends is not accepted**

Provide that

- (1) If an offer to make amends under *Head 26*, duly made and not withdrawn, is not accepted by the aggrieved party, the following provisions apply.
- (2) The fact that the offer was made shall be a defence (subject to *subsection (3)*) to proceedings for defamation in respect of the matter complained of by that party against the person making the offer and, where the offer is a qualified one, that offer is only a defence in respect of the meaning to which the offer related.
- (3) There shall be no such defence if the person by whom the offer was made knew or had reason to believe that the matter complained of-
  - (a) referred to the aggrieved party or was likely to be understood as referring to him or her, and
  - (b) was both false and defamatory of that party;

but it shall be presumed until the contrary is shown that he or she did not know and had no reason to believe that was the case.

- (4) The person who made the offer need not rely on it by way of defence, but if he or she does they may not rely on any other defence and, if the offer was a qualified offer, this applies only in respect of the meaning to which the offer related.

## 29 **Innocent publication**

Provide that

- (1) It shall be a defence, to be known (and in this Act referred to) as the "defence of innocent publication" in proceedings for defamation for the defendant to show that -
  - (a) they were not the author, editor or publisher of the statement complained of;
  - (b) they took reasonable care in relation to its publication, and
  - (c) they did not know, and had no reason to believe, that what they did caused or contributed to the publication of a statement for which there would be liability in defamation.
  
- (2) A person shall not be considered the author, editor or publisher of a statement if they are only involved -
  - (a) in printing, producing, distributing or selling printed material containing the statement;
  - (b) in processing, making copies of, distributing, exhibiting or selling a film or sound recording containing the statement;
  - (c) in processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded, or in operating or providing any equipment, system or service by means of which the statement is retrieved, copied, distributed or made available in electronic form; or,
  - (d) as a broadcaster of a live programme containing the statement in circumstances in which the broadcaster had no effective control over the maker of the statement and as soon as practicable thereafter has sought to minimise the impact of the statement.

In a case not within *paragraphs (a) to (d)* the court may have regard to those provisions by way of analogy in deciding whether a person is to be considered the author, editor or publisher of a statement.



- (3) In determining for purposes of this section whether a person took reasonable care, or had reason to believe that what they did caused or contributed to the publication of a defamatory statement, regard shall be had to -
- (a) the extent of their responsibility for the content of the statement or the decision to publish it,
  - (b) the nature or circumstances of the publication, and
  - (c) the previous conduct or character of the author, editor or publisher.
- (4) Where the operator of, or provider of access to, a communication system is not the author, editor or publisher of a statement which is alleged to be defamatory, the provisions of the European Communities (Directive 2000/31/EC) Regulations 2003, shall apply.
- (5) In determining whether an operator of, or provider of access to, a communications system has actual knowledge of defamatory material for the purposes of the European Communities (Directive 2000/31/EC) Regulations 2003, the court shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to-
- (a) whether an operator of, or provider of access to, a communications system has received a notice in writing of the alleged defamatory material, and
  - (b) the extent to which any notice includes-
    - (i) the full name and address of the sender of the notice;
    - (ii) details of the location of the information in question; and
    - (iii) details of the defamatory nature of the information in question.
- (6) The fact that the operator of, or provider of access to, a communication system must act expeditiously to remove or disable defamatory material under the Regulations shall not prevent them from carrying out an investigation as to whether there would be liability in defamation in respect of the matter complained of.

**Note:** this Head develops, in a more comprehensive way, the common law defence of innocent dissemination which has traditionally been available to distributors. It also contains provisions which are particular to internet service providers and which link in with obligations which are already imposed via the E-Commerce Directive.

**30      Consent to publication**

Provide that

In proceedings for defamation it shall be a defence, to be known (and in this Act referred to) as "the defence of consent to publication", where the defendant shows that the plaintiff consented to the publication of the matter complained of.

**Note:** this Head puts the common law defence of consent onto a statutory footing.

**PART 6**

**Miscellaneous**

**31. Defamation of group or class**

Provide that

A person who publishes allegedly defamatory matter concerning a group or class of persons shall be liable to a member of the group or class if:

- (a) the group or class is sufficiently small that the matter complained of can reasonably be understood to refer to such a member, or
- (b) the circumstances of the publication of the matter complained of reasonably gives rise to the conclusion that it refers particularly to such a member.

**Note:** this Head is clarificatory of existing law.

**32. Multiple publication**

Provide that

- (1) A person shall have a single cause of action in defamation in respect of a multiple publication provided that the court may, at its discretion, permit more than one set of defamation proceedings to be brought in respect of a multiple publication.
- (2) Proceedings for defamation based on publication by an electronic means of communication shall give rise to a single cause of action in defamation no matter how many times the publication is accessed.
- (3) In this head "multiple publication" means the production in any material form in the same publication, on or about the same date, of copies of the same or substantially the same material.

**Note:** this Head provides for a general rule that only one cause of action will lie in respect of a multiple publication (as defined). Provision is also made to deal with a cause of action which arises out of a publication by an electronic means of communication. It is made clear a single cause of action will lie notwithstanding the number of times the publication may be accessed.

**33. Publication by another person**

Provide that

- (1) Where proceedings for defamation have been commenced in respect of allegedly defamatory matter, further proceedings in respect of the same (or substantially the same) matter published by another person, on or about the same date, may be brought against the other person if they are commenced within thirty days of the commencement of the first proceedings.
- (2) The court may at its discretion extend the period of thirty days specified in *subhead (1)*, but no such extension shall be for a period ending after the date on which the first action is set down for trial.
- (3) Where further defamation proceedings are commenced in accordance with *subheads (1)* and *(2)*, the plaintiff shall notify in writing the defendants in each of the proceedings of the existence of all other proceedings.

**Note:** this Head introduces certain limitations on the ability of a plaintiff to bring a second action for defamation against another person where the matter complained of is the same or substantially the same as that which is the subject of the first set of proceedings.

**34. Proceedings for defamation brought by a body corporate**

Provide that

For the avoidance of doubt it is hereby stated that a body corporate can have a cause of action in defamation irrespective of whether financial loss is consequent upon publication of the relevant matter or was likely to be consequent upon such publication.

**Note:** this Head is intended to be declaratory of the position prevailing under present law.

**35. Agreements to indemnify against liability for defamation**

Provide that

An agreement for indemnifying any person against civil liability for defamation in respect of the publication of defamatory matter shall not be unlawful unless at the time of publication that person knows that the matter is defamatory and does not reasonably believe that there is a good defence to any proceedings brought upon that matter.

**Note:** this Head is a restatement of section 25 of the Defamation Act, 1961.



**36. Dismissal for want of prosecution**

Provide that

Where no step has been taken by the plaintiff in proceedings for defamation within one year from the date of issue of the proceedings, the defendant may apply to the court for the dismissal of the proceedings for want of prosecution, and the court shall grant the application unless it is of opinion that the circumstances of the case do not warrant dismissal.

**Note:** this Head provides that defamation proceedings in which no step has been taken by the plaintiff for one year from the date they were commenced may be dismissed on application to the court by the defendant.

### 37. **Limitation of defamation actions**

Provide that

- (1) Subject to this head, proceedings for defamation shall not be brought after the expiration of one year from the date on which the cause of action accrued.
- (2) An action claiming damages for slander of title, slander of goods or other malicious falsehood shall not be brought after the expiration of one year from the date on which the cause of action accrued.
- (3) Where the interests of justice so require, the court may direct that *subheads (1) and (2)* shall not apply.
- (4) The court shall not make a direction under *subhead (3)* unless it is satisfied that any prejudice which the plaintiff might suffer if the action were not to proceed significantly outweighs any prejudice which the defendant might suffer if the action were to proceed.
- (5) In making a direction under *subhead (3)*, the court shall have regard to the circumstances of the case including the length of and reason for the delay and the extent to which the relevant evidence is likely to be unavailable or less cogent because of the delay;
- (6) Notwithstanding *subhead (3)*, no proceedings under *subheads (1) and (2)* may be brought after the expiration of six years from the date on which the cause of action accrued.
- (7) The provisions of sections 49, 71 and 72 of the Statute of Limitations, 1957, shall apply to the periods of limitation prescribed by *subheads (1), (2), and (6)*
- (8) Section 11(2) of the Statute of Limitations, 1957 (as amended by section 3(2) of the Statute of Limitations, 1991) is amended by:
  - (a) the deletion, in paragraph (a), of the words "paragraph (c) of this subsection and to", and
  - (b) the deletion of paragraph (c).
- (9) The causes of action referred to in this head shall accrue from the date on which the matter complained of was first published and, in the case of publication by an electronic means of communication, that date shall be the date on which the material was first made available.

**Note:** this Head provides that a one-year limitation period shall apply in respect of defamation proceedings and related matters. However, to avoid any injustice which this timeframe might cause, provision is also made for a "long-stop" of six years to cater for exceptional cases. Clarification is also given as to when the cause of action accrues in respect of the matters which are dealt with in this Head.

**38. Survival of actions (amendment of the Civil Liability Act, 1961)**

Provide that:

The Civil Liability Act, 1961 is hereby amended:

- (a) in section 6(a) by the deletion of the words "or for defamation",
- (b) in section 7 by the insertion of the following subsection after subsection (4):

" (5) Where the cause of action is for defamation, that cause shall only survive the death of the person who is the subject of the allegedly defamatory publication where proceedings for defamation were pending at the time of his or her death. In such a case, and notwithstanding any other provision contained in this Act, the only remedies available to the court shall be a declaratory judgment, an injunction or special damages.", and

- (c) in section 8 by the insertion of the following subsection after subsection (2):

"(3) Where, by virtue of subsection (1) of this section, a cause of action for defamation subsisting against the deceased person survives against the estate of that person, the damages recoverable by a plaintiff shall not include aggravated, exemplary or punitive damages.".

**Note:** this Head provides that a cause of action in defamation should survive the death of the defamer after publication and, as a corollary, that it should also survive the death of the alleged victim provided, in the latter instance, that proceedings for defamation were pending at the time of his or her death.

**39. Provisions relating to criminal offences**

Provide that

In proceedings for defamation the conviction or acquittal in the State by a court of competent jurisdiction of any person, whether or not a party to the proceedings, shall be evidence unless the contrary is shown of that conviction or acquittal and of the facts on which the conviction or acquittal, as the case may be, was based.

**Note:** this Head is evidential in nature and amends and clarifies the existing law relating to the admissibility of acquittals and convictions in defamation proceedings.

**40     Jurisdiction of courts**

Provide that

- (1)     An action claiming damages for defamation may be commenced in the High Court or in the Circuit Court.
  
- (2)     Notwithstanding the provisions contained in the Third Schedule to the Courts (Supplemental Provisions) Act, 1961, as amended, the Circuit Court has jurisdiction in any action claiming damages for defamation where the amount of the claim does not exceed €50,000.

**Note:** this Head provides that, notwithstanding current jurisdiction limits, all defamation cases where the amount of the claim does not exceed €50,000 may be taken in the Circuit Court.

**41 Appeals in defamation actions**

Provide that

For the avoidance of doubt, it is hereby enacted that in any appeal from a verdict in the High Court in proceedings for defamation the Supreme Court may assess the amount of damages to be awarded and may substitute that assessment for the amount awarded in the High Court proceedings.

**Note:** this Head is self-explanatory.

**42. Meaning**

Provide that

- (1) In defamation proceedings, the court shall not be asked to rule whether the matter complained of is arguably capable of carrying the imputation pleaded by the plaintiff or whether it is arguably capable of bearing a defamatory meaning; but the court may decide as a preliminary issue whether the matter complained of is reasonably capable of carrying the imputation pleaded by the plaintiff and, if it is, whether the imputation is reasonably capable of bearing a defamatory meaning.
- (2) If, on an application pursuant to subhead (1), the court holds that any matter complained of is not reasonably capable of carrying the imputation pleaded by the plaintiff, or that the imputation pleaded by the plaintiff is not reasonably capable of bearing a defamatory meaning, then the court shall dismiss the plaintiff's claim in so far as it relates to any such matter, and if the court so holds in relation to all of the imputations pleaded by the plaintiff then it shall dismiss the plaintiff's claim in full.
- (3) An application under this head shall be dealt with by notice of motion and shall be determined before a judge sitting alone.

**Note:** this Head provides for a preliminary application to the court as to whether or not the matters complained of in defamation proceedings are reasonably capable of carrying the imputation pleaded by the plaintiff and, if so, whether that imputation is reasonably capable of bearing a defamatory meaning.



**43. Amendment of other enactments**

Provide that:

The following sections are hereby amended by the substitution of the term defamation for that of libel or slander, as the case may be, in each place where it occurs:

- (a) section 77A(i) of the Courts of Justice Act 1924 (inserted by the Courts Act 1991);
- (b) section 49(3) of the Statute of Limitations 1957, and
- (c) sections 11(5) and 14(6) of the Civil Liability Act 1961.

**Note:** the purpose of this Head is to amend current statutory references to libel or slander by substituting the term defamation in appropriate cases.

**Part 7**

**Press Council**

**44. Interpretation of this Part**

Provide that

For the purposes of this Part -

"Minister" means the Minister for Justice, Equality and Law Reform,

"Person" shall include any natural or legal person, unincorporated association or other similar group, and

"Publication" includes a newspaper, magazine or periodical which is printed or published in this jurisdiction (including an electronic version of same).

**Note:** this Head is self-explanatory.

**45. Press Council**

Provide that

- (1) The Minister may by order appoint a day to be the establishment day for
- (2) On the establishment day there shall be established a body to be known as the Press Council and which is in this Act referred to as the Council to perform the functions conferred on it by this Act.
- (3) The Council shall, subject to the provisions of this Act, be independent in the performance of its functions and shall regulate its procedure and practice.
- (4) The Council shall have all such powers as are necessary or expedient for, or incidental to, the performance of its functions under this Act.

**Note:** these are standard provisions.

**46. Overriding principles**

Provide that

- (1) As its overriding principles, the Council shall have regard to -
  - (a) the right to freedom of expression and freedom of the press;
  - (b) the protection of the public's interest in full, fair, accurate and balanced reporting, and
  - (c) the maintenance of the highest ethical and professional standards of journalism.

**Note:** this Head sets out the overriding principles to which the Press Council is to have regard.

**47     Functions**

Provide that

The functions of the Council shall be to -

- (a) prepare and from time to time revise a code to be called the Press Code of Conduct;
- (b) receive, investigate and decide on complaints concerning an alleged failure by a publication to comply with any provision of the above-mentioned code, and
- (c) participate in general public debate about matters relating to its general overriding principles.

**Note:** this Head sets out the functions of the proposed Press Council.

**48. Membership of Council and Quorum**

Provide that

- (1) The Council shall consist of 9 members appointed by the Government (one of whom shall be appointed as its chairperson) of whom at least 4 shall be men and 4 shall be women.
- (2) In appointing the members of the Council, the Government shall have regard to -
  - (a) the public interest in general and the overriding principles of the Council,
  - (b) the interests of the members of the public as readers,
  - (c) the interests of the relevant publications, and
  - (d) the interests of journalists and other employees of the publications.
- (3) When appointing a member of the Council, the Government shall fix his or her term of office, which shall not exceed 5 years and, subject to *head 51*, the member shall hold his or her office on such terms and conditions (other than terms or conditions relating to remuneration or the payment of allowances) as are determined by the Government at the time of his or her appointment.
- (4) A member of the Council may at any time resign his or her office by letter addressed to the Government and the resignation shall take effect as on and from the date of receipt of the letter by the Government.
- (5) A member of the Council whose term of office expires by the effluxion of time shall be eligible for reappointment.
- (6) There shall be paid to members of the Council such remuneration (if any) and allowances (if any) as the Minister, with the consent of the Minister for Finance, from time to time determines.
- (7) The Council shall hold such and so many meetings as may be necessary for the performance of its functions.
- (8) The quorum for a meeting of the Council shall be 5.
- (9) The Council may act notwithstanding one or more vacancies among its members (including one or more vacancies that result in *subhead (1)* not being complied with).

**Note:** these are standard membership provisions.

**49. Chairperson**

Provide that

- (1) The chairperson of the Council shall, unless he or she sooner dies, resigns the office of chairperson or ceases to be chairperson under *subhead (3)*, hold office until the expiration of his or her period of office as a member of the Council.
- (2) The chairperson of the Council may at any time resign his or her office as chairperson by letter sent to the Government and the resignation shall take effect at the commencement of the meeting of the Council held next after the body has been informed by the Government of the resignation.
- (3) Where the chairperson of the Council ceases during his term of office to be a member of the Council he or she shall also cease to be chairperson of the Council.

**Note:** this is a standard provision



**50. Vice-chairperson**

Provide that

The Government may appoint one of the members of the Council to be vice-chairperson of the Council with the function of acting as chairperson in the absence of the chairperson.

**Note:** this is standard.

**51. Disqualification**

Provide that

- (1) A member of the Council may be removed from office by the Government for stated reasons if, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.
- (2) Notwithstanding *subhead (1)*, where a member of the Council is -
  - (a) nominated as a member of Seanad Éireann,
  - (b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or
  - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament, he or she shall thereupon cease to be a member of the Council.
- (3) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of the Council.

**Note:** these disqualification provisions are standard.

**52. Staff**

Provide that

- (1) Subject to the consent of the Minister and the Minister for Finance, the Council may, from time to time, appoint such and so many persons to be employees of the Council as it thinks fit.
- (2) An employee of the Council shall be employed on such terms and conditions as the Council, with the consent of Minister and the Minister for Finance, may from time to time determine.
- (3) The Council shall pay to its employees such remuneration, fees and allowances for expenses as the Council, with the consent of the Minister and the Minister for Finance, may from time to time determine.

**Note:** the provisions in this Head provide a mechanism whereby the Council can hire staff who need not be civil servants.

**53    Financing**

Provide that

In each financial year there may be paid to the Council out of monies provided by the Oireachtas a grant of such amount as the Minister, with the consent of the Minister for Finance, may sanction towards the expenses of the Council in the performance of its functions.

**Note:** this is a standard provision

## 54 **The Press Code of Conduct**

Provide that

- (1) Having regard to its overriding principles set out in *Head 46*, the Council shall prepare and from time to time modify a code, to be called the Press Code of Conduct, which shall -
  - (a) recognise the wide discretion which a publication has with regard both to the content and to the presentation of material, and
  - (b) specify, subject to the public interest, standards to be complied with and rules and practices to be observed, in respect of any publication including but not limited to -
    - (i) standards of journalistic ethics and practice,
    - (ii) the accuracy of any facts or information relating in particular to the honour or reputation of any person, or group of persons (whether living or dead),
    - (iii) the intimidation or harassment of, or the unreasonable encroachment upon the dignity or privacy of, any person, or group of persons (whether living or dead),
    - (iv) the taste and decency of the publication, in particular in respect of the portrayal of violence and sexual conduct in the context of the particular publication as a whole,
    - (v) sensitivity in dealing with, and reporting upon, children and other vulnerable persons,
    - (vi) standards in dealing with matters such as gender, marital status, family status, sexual orientation, religion, age disability, race, colour, nationality, ethnic or national origin or membership of the traveller community.
- (2) In this Head modify shall include revision, supplementation or amendment.
- (3) In preparing or modifying the Press Code of Conduct, the Council shall consult with any person who has subscribed to the Council, and have regard to the views expressed by any person so consulted.

- (4) Before finalising the preparation or modification of a code under this Head, the Council shall make available for inspection by any person who makes a request of it in that behalf a draft of the code or modification it proposes so to finalise and may have regard to any submission made to it, within such period as it specifies for the purpose, by that person in relation to the draft before it finalises the code or revision.
- (5) Where it considers it to be appropriate the Council may also invite the views of individual publications on the draft code or any modification thereof
- (6) The Council shall cause to be published in at least one newspaper circulating in the State notice of:
  - (a) the fact that, pursuant to *subhead (4)*, a draft referred to in that subhead is available for inspection;
  - (b) of the place at which or the means by which the draft can be inspected, and
  - (c) the period specified by it under that subsection within which submissions may be made to it in relation to the draft.

**Note:** this Head is one of the key provisions in this Part. It indicates, in general terms, the matters which are appropriate to a Press Code of Conduct and it provides for consultation in respect of the content of that Code.

**55. Compliance with code and subscription**

Provide that

- (1) Whenever the Council, pursuant to *Head 54(a)*, prepares or modifies the Press Code of Conduct, every publication shall comply with such code and any modification thereof.
- (2) Each publication may subscribe to the Council, upon payment of an annual fee set by the Council having regard to that publication's circulation.
- (3) Any other person may apply to the Council to subscribe to it and may so subscribe if the Council so decides upon payment of an annual fee set by the Council.
- (4) Subscription to the Council, co-operation with its investigations, and compliance with its decisions and with any code drawn up pursuant to *Head 50*, shall be matters which may be taken into account by a court pursuant to *Head 23*.
- (5) A publication or other body which has subscribed to the Council may, subject to the procedures and practices specified by the Council, apply to the Council to comment on a complaint pending for the time being before the Council.
- (6) In appointing a member or members of the Council pursuant to *Head 48(2)*, the Government shall have regard in particular to any person recommended for appointment by either a publication which has subscribed to the Council pursuant to *subhead (2)* or by a group of such publications.
- (7) The Government may also have regard to any person recommended for appointment by either a publication which has indicated its intention to subscribe to the Council pursuant to *subhead (2)* or by a group of such publications.

**Note:** this Head provides that every publication, regardless of whether or not they subscribe to the Press Council, shall comply with the Press Code of Conduct. Subscription, however, will bring with it certain benefits in terms of a right to comment on complaints pending before the Council and the ability to recommend a person for appointment to the Council. The matters covered by this Head will also be relevant in the context of a court determining whether or not the defence of reasonable publication has been made out.

**56. Persons entitled to complain**

Provide that

- (1) Any person who is directly affected by the alleged non-compliance with one or more provisions of the code by a publication (the "complainant") may make a complaint under this Head.
- (2) Notwithstanding *subhead (1)*, the Council shall, in appropriate cases, accept a complaint from a person who is not directly affected by the alleged non-compliance with the code.
- (3) No complaint shall be accepted by the Council unless the complainant has first sought redress from the publication in question and is either dissatisfied with the response received or has received no response within 2 weeks of having first sought redress.
- (4) The Council shall not proceed to investigate a complaint which does not relate to an aspect of the code which is for the time being in force.
- (5) Where the Council is of the opinion that the complaint is frivolous or vexatious it may, subject to such procedures as it may prescribe, decline to investigate the complaint.

**Note:** this Head sets out the circumstances which determine who may make a complaint and under what conditions.



**57     Form of complaint and waiver**

Provide that

- (1) Any complaint shall be in writing in a form to be prescribed by the Council and shall be made to the Council not more than 3 months from the date of the publication in which the alleged non-compliance with the code occurred.
- (2) The receipt by the Council of such a form shall constitute a waiver by the complainant of any right which he or she may have had to institute civil proceedings in respect of the subject matter of the complaint.

**Note:** this Head aims to ensure that parallel actions will not take place before the Council and the courts

**58. Procedures to be followed in investigating a complaint**

Provide that

- (1) When the Council propose to investigate a complaint made under *Head 56*, the Council, subject to such procedures as it may prescribe, shall endeavour to bring about, in as informal a way as possible, an outcome which is acceptable to both the complainant and the publication.
- (2) Where it does not prove possible to bring about an informal resolution of the matter, the Council shall proceed to investigate the complaint formally and shall afford the publication to which the complaint relates an opportunity to comment in writing on the complaint.
- (3) Failure by the publication to which the complaint relates to comment on the complaint shall not preclude the Council from deciding on that complaint.
- (4) Any other person having a legitimate interest in the publication or publications to which the complaint relates may apply to the Council for an opportunity to comment in writing on the complaint, and the Council may afford such an opportunity to such a person.
- (5) The consideration by the Council of a complaint shall be carried out by the Council in private, and a decision shall be arrived at by the Council expeditiously, if possible within two months of the receipt of the complaint.
- (6) In making a decision, the Council may -
  - (a) uphold the complaint in whole or in part, or
  - (b) dismiss the complaint.
- (7) If the complaint is upheld, whether in whole or in part, the Council may specify the remedial action which the publication should undertake.
- (8) Such remedial action shall not include monetary damages.
- (9) The Council may prescribe its own procedures for the investigation of a complaint subject to the proviso that not less than 5 Council members shall investigate a particular complaint.

**Note:** while the procedures to be followed in investigating a complaint are essentially for the Council itself to determine, this Head sets out some broad principles to guide those procedures. The Head also provides that the remedies at the disposal of the Council should not include monetary damages.

**59.Procedures to be followed when a decision on the complaint has been reached**

Provide that

- (1) As soon as may be after they decide on a complaint made under this section, the Council shall send to-
  - (a) the person who made the complaint,
  - (b) the publication concerned, and
  - (c) any person who commented upon the complaint pursuant to *subhead (4) of Head 58*

a statement in writing of their decision with an indication, if it be the case, of the remedial action required on the part of the publication.

- (2) The remedial action in question may direct the publication which is the subject of the complaint to do any or all of the following -
  - (a) publish the substance of the decision of the Council,
  - (b) publish any correction of inaccurate facts or information relating to the individual concerned, in a manner corresponding to that in which the publication to which the complaint relates took place,
  - (c) publish a retraction in respect of the material complained of, or
  - (d) follow any other action which the Council may deem appropriate.

**Note:** these provisions are self-explanatory.

**60. Publication of decisions**

Provide that

Any decisions given by the Council under *Head 58* may be published on a regular basis in such form as shall be prescribed by Council.

**Note:** this Head provides for publication on a regular basis of Council decisions.

**61     Right of Council to apply to the Circuit Court**

Provide that

- (1) Where a publication refuses to comply with a decision of the Council, the Council may apply to the Circuit Court for an order compelling the publication to so comply.
- (2) If a publication fails to comply with any order of the Circuit Court made pursuant to *subhead (1)*, the Circuit Court may hold that the publication is in contempt of the Court and may make such order as is appropriate.
- (3) If the Circuit Court imposes any fine pursuant to *subhead (2)*, it shall, on the application of the Council (made before the time of such imposition) provide by order for the payment of the amount of the fine to the Council and such payment may be enforced by the Council as if it were due to it on foot of a decree or order made by the Court in civil proceedings.

**Note:** this Head is intended to provide a mechanism whereby, in the event of non-compliance with a Council decision, the Council would be able to apply to the Circuit Court for a court order which would compel compliance. Non-compliance with that court order could lead to the publication in question being held to be in contempt of court.

**62. Inability of Council member to act**

Provide that

A person shall not act as a member of the Council in relation to any matter with respect to which he or she has a material financial or other beneficial interest.

**Note:** this is a standard provision.

**63. Commencement provision in respect of Heads 55 to 60**

Provide that

*Head 55*, insofar as may be appropriate, and *Heads 56 to 60* shall come into operation on such day as the Minister may appoint by order, subject to the proviso that they shall not come into operation until such time as the first code provided for in *Head 54* has been finalised by the Council.

**Note:** the purpose of this Head is to ensure that the complaints mechanism which is envisaged can only come into being when there is a code of conduct in place to act as a reference.

**64. Annual Report of Press Complaints Council**

Provide that

- (1) As soon as may be, but not later than 6 months, after the end of each year, the Council shall make a report to the Minister in respect of their activities during that year.
- (2) The report under *subhead (1)* shall include information on the performance of the functions of the Council during the period to which the report relates and, without prejudice to the generality of the foregoing, shall contain such particulars (if any) as they think fit of decisions made by them pursuant to *Head 58* during that year.
- (3) The Minister shall, as soon as may be after the receipt by him or her of the report, cause a copy of it to be laid before each House of the Oireachtas.

**Note:** this is a standard provision.



**PART 8**  
**Criminal Offences**

**65. Abolition of common law libel offences**

Provide that

- (1) The common law offences of criminal, blasphemous, seditious and obscene libel are hereby abolished.
- (2) Notwithstanding *subhead (1)*, nothing in this Bill shall preclude or otherwise affect the prosecution of any such offence committed before the commencement of this Bill.

**Note:** this provision is self-explanatory.

**66. Offence of publication of gravely harmful statements**

Provide that

- (1) A person who, without lawful authority or reasonable excuse:
  - (a) intentionally and with malice publishes or causes to be published by any means whatsoever to one or more persons other than the natural person the subject of the matter published a false statement, and
  - (b) that statement was calculated to gravely damage and has gravely damaged the reputation of that natural person, and
  - (c) that statement was calculated to cause and has caused serious harm to the mind of the natural person the subject of the statement shall be guilty of an offence.
- (2) No criminal prosecution shall be commenced for any offence under this Head without, within one year of the commission of the alleged offence, there being first had and obtained -
  - (a) the consent of the Director of Public Prosecutions, or
  - (b) an order of a Judge of the High Court sitting *in camera* being first had and obtained, and every application for such order shall be made on notice to the person accused of the alleged offence, who shall have an opportunity of being heard against the application.
- (3) Any defence subsisting at common law, under statute or by virtue of the Constitution shall be available to a defendant in a prosecution under this Head in like manner and to the same extent as to a defendant in civil proceedings for defamation.
- (4) Whenever, upon the trial of an offence under this Head, a plea of not guilty having been entered, evidence is given establishing a presumption of publication against the person charged by the act of any other person by his authority, it shall be competent for the person charged to prove that the publication was made without his authority, consent or knowledge and that the publication did not arise from want of due care or caution on his part.
- (5) A judge of the District Court shall have jurisdiction to try an offence summarily under this Head if:

(a) he is of the opinion that the facts proved or alleged against a defendant charged with such an offence constitute a minor offence fit to be tried summarily, and

(b) the defendant, on being informed by the judge of his right to be tried by jury, does not object to being tried summarily.

**Note:** this provision creates a new offence of publication of gravely harmful statements which is intended to replace the existing offence of criminal libel.

**67. Penalties on conviction of publication of gravely harmful statements**

Provide that

- (1) A person guilty of an offence under *Head 66* shall be liable
  - (a) on summary conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 12 months or to both, or
  - (b) on conviction on indictment to a fine not exceeding €15,000 or to imprisonment for a term not exceeding five years or to both.
- (2) Where a person is guilty of an offence under *Head 66*, the court may, in addition to or as an alternative to any other penalty, order any or all of the following:
  - (a) that the person shall not, for such period as the court may specify, communicate by any means with the other person,
  - (b) that the person shall not, for such period and, or, in such fashion as the court may specify, publish any statements concerning the other person,
  - (c) that the person shall, in such fashion as the court may specify, publish or cause to be published a statement or statements to the effect that the statement or statements originally published by that person were false and gravely damaged the reputation of the other person and caused serious harm to the mind of the other person.
- (3) Where a person is guilty of an offence under *Head (66)*, the court may, in addition to or as an alternative to any other penalty, make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in the order, of all copies of the publication in the possession of such person or of any other person named in the order for his or her use, evidence upon oath having been previously given to the satisfaction of the court that copies of the said publication are in the possession of such other person for the use of the person convicted.
- (4) Upon the making of an order under *subhead (3)*, any member of the Garda Síochána acting under such order may enter, if necessary by the use of force, and search for any copies of the said publication any building, house or other place belonging to the person convicted or to such other person named in the order

and may seize and carry away and detain in the manner directed in such order all copies of the publication found therein.

- (5) If, in any such case, the conviction is quashed on appeal, any copies of the publication seized under an order under *subhead (3)* shall be returned free of charge to the person or persons from whom they were seized.
- (6) Where, in any such case, an appeal is not lodged or the conviction is confirmed on appeal, any copies of the publication seized under an order under *subhead (3)* shall, on the application of a member of the Garda Síochána to the court which made such order, be disposed of in such manner as such court may direct.
- (7) Where a person is guilty of an offence under *Head 66*, the Court may, in addition to or as an alternative to any other penalty, make an order that the operator of, or provider of access to, a communications system, shall:
  - (a) make a copy of the publication on a storage medium independent of the communications system,
  - (b) deliver that copy to a member of the Garda Síochána, and
  - (c) remove the publication from the communications system.
- (8) If, in any such case, the conviction is quashed on appeal, the storage medium delivered under an order under *subhead (7)* shall be returned free of charge to the operator of, or provider of access to, the communications system concerned.
- (9) Where, in any such case, an appeal is not lodged or the conviction is confirmed on appeal, any storage medium delivered under an order under *subhead 7* shall, on the application of a member of the Garda Síochána to the court which made such order, be disposed of in such manner as such court may direct.

**Note:** this is a standard offences provision.

## **Schedule**

### **Statements having qualified privilege**

#### **Part 1**

#### **Statements privileged without explanation or contradiction**

##### **General provision in respect of matters which are themselves absolutely privileged**

(i) a fair and accurate report of any matter absolutely privileged pursuant to *Head 19*, or otherwise, save where such report is itself absolutely privileged pursuant to that head.

##### **Judicial proceedings**

(ii) a fair and accurate report of any proceedings publicly heard before or judgment made public by a court (including a court - martial) exercising jurisdiction under the law of any legislature (including subordinate or federal legislature) or Constitution of any foreign sovereign State.

##### **Judges acting non judicially**

(iii) A fair and accurate report of the proceedings at any meeting or sitting of any Judge acting otherwise than as a court exercising judicial authority and any corresponding person so acting in Northern Ireland.

##### **Legislative proceedings**

(iv) A fair and accurate report of any proceedings in public of a house of any legislature (including subordinate or federal legislatures) of any foreign sovereign State.

##### **Public Inquiries**

(v) A fair and accurate report of proceedings in public of any body duly appointed, in the State or in Northern Ireland, under legislative, executive, judicial or Constitutional authority to hold a public inquiry on a matter of public importance.

(vi) A fair and accurate report of any proceedings in public of any body which is part of any legislature (including subordinate or federal legislatures) of any foreign sovereign State or any body duly appointed by or under the legislative, executive, judicial or Constitutional authority of a foreign State to hold a public enquiry on a matter of public importance.

##### **International Organisations and conferences**

(vii) A fair and accurate report of any proceedings in public of an international organisation, official or otherwise, of which the State or Government is a member or the proceedings of which are of interest to the Irish public.

(viii) A fair and accurate report of any proceedings in public of any international conference to which the Government sends a representative or observer or at which governments of any country are represented.



**Public Documents**

(ix) A fair and accurate copy or extract from any register kept in pursuance of any law which is open to inspection by the public or of any other document which is required by law to be open to inspection by the public.

**Notices**

(x) A fair and accurate report or copy or summary of any notice or advertisement published by or on the authority of any court in the State or in a Member State of the European Community or any Judge or officer of such a court.

(xi) A fair and accurate report or copy or summary of any notice or other matter issued for the information of the public by or on behalf of any Government department, local authority or the Commissioner of the Garda Síochána or by or on behalf of a corresponding department, authority or officer in a Member State of the European Community.

(xii) A fair and accurate report or copy or summary of any notice or other matter issued by or on the authority of a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas.

**Part II****Statements privileged subject to explanation or contradiction****Associations**

(xiii) A fair and accurate report of the proceedings, findings or decision of an association or of a committee or governing body of an association whether incorporated or otherwise, in the State or in a Member State of the European Community, relating to a member of the association or to a person subject, by contract or otherwise, to control by the association.

**Public meetings**

(xiv) A fair and accurate report of the proceedings at any public meeting, held in the State or in a Member State of the European Community, being a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern whether the admission to the meeting is general or restricted.

**Company meetings**

(xv) A fair and accurate report of the proceedings at a general meeting, whether in the State or in a Member State of the European Community, of any company or association constituted, registered or certified by or under statutory authority or incorporated by charter.



**Local Authorities**

(xvi) A fair and accurate report of the proceedings at any meeting or sitting of any local authority or local authorities or health board, and any corresponding authority, or committee thereof in a Member State of the European Community.

**Press conferences**

(xvii) A fair and accurate report of a press conference convened by or on behalf of the bodies mentioned in this Part or the organisers of a public meeting within the meaning of (xiv) above to give an account to the public of the relevant proceedings or meeting.

**Reports of reports**

(xviii) A fair and accurate report of a report by another person or body where the defence of qualified privilege would apply to the first report.

**Reports related to the Irish Takeover Panel**

(xix) Without prejudice to the provisions of section 20 of the Irish Takeover Panel Act, 1997, a copy or fair and accurate report or summary of any ruling, direction, report, investigation, statement (as defined in section 20(6) of that Act) or notice made, given, prepared, published or served by the Irish Takeover Panel.