

BY EMAIL & BY POST**Policy, Reform & Legislation Department**

NSW Department of Communities and Justice

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To whom it may concern,

Model Defamation Amendment Provisions 2022**Submission by Removify**

This letter is in response to the 12 August 2022 Meeting of Attorneys-General and the invitation for submissions on the draft **Part A Model Defamation Amendment Provisions** and accompanying **Background Paper** (the “**Draft Amendments**”).

Removify is an interested party to the Draft Amendments – having represented thousands of individuals and SME’s with responding to and seeking the removal of, defamatory and otherwise harmful online content.

Our business exists because of an administrative and moral failure on the part of (mostly foreign) online platforms to self-moderate the content they host. Alphabet, Meta, ByteDance – these “**digital intermediaries**” (as envisaged in the Amendment provisions) rake in **billions of dollars** in advertising revenue by collecting, publishing, and spreading online content to the Australian public. How innocent can we say the role of these “digital intermediaries” are, when they are directly involved in (and indeed their businesses rely on) directing, controlling, and in many ways monopolising the flow of online content to the Australian public?

Despite the immense profits these businesses report each year, these businesses seek to dodge all responsibility for the harmful content they permit, host, and spread like wildfire. We have seen a failure and refusal on the part of these entities to enforce **even their own policies** – there are countless instances where Alphabet, Meta, and Bytedance have inexplicably refused to remove content that they have themselves prohibited in their own Terms of Use.

These internet giants have made it almost impossible for the average Australian to even contact a human representative of the organisation. They have shielded themselves behind layers of machine learning, automated responses, and administrative hoops. These Amendments, if passed, pose the risk of making it even more difficult for Australians to even report content.

So what recourse does the average Australian have to defamatory and libellous online content? The courts? As the Attorneys-General are well aware, litigation (particularly for defamation) is already prohibitively expensive, slow, risky, and burdens our public court system. This is assuming you can even find the originator of the defaming content – which in the online sphere is often not possible.

We agree with the Attorneys-General that Australian Defamation law was created at a different time. In the pre-internet world, defamatory content could only spread so far, there was a limit to the scope of audience that a publisher could reach – a magazine’s or newspaper’s readership might extend into the hundreds, maybe thousands? Now, given the nature and reach of these internet giants, the lies from one malicious actor can spread instantly to millions of readers, listeners or viewers, wreaking irreparable havoc on a person’s life and livelihood.

We, Australians, elect our governments and parliaments to represent us – the people who are being hurt by the rampant and uncontrolled spread of defamatory & malicious online content – not foreign entities seeking to dodge responsibility.

We encourage you to ask yourself – who are these amendments aiming to protect? Because the average Australian is not at risk of getting sued for a defamatory third-party comment on their blog. Again, we point to the barriers that exist to this – the prohibitive cost of litigation, as well as the opportunities that already exist for smaller digital intermediaries or hosts to remove defamatory third-party content and make amends.

This initiative only serves the interests of giant foreign entities who already consider themselves to be above the law – Alphabet, Meta, Bytedance. Entities who have (or should have) the resources to moderate their platforms, yet refuse to do so. Entities who profit directly from the content that they control, spread, and direct, and who are in the best position to respond and mitigate against the harms and injuries of defamatory content.

We should expect more, not less, from these digital intermediaries. For this reason, we oppose the Amendments proposed.

Thank you for your consideration.

Regards,



Removify