

## **DEFAMATION ACT 2013**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Section 6: Peer-reviewed statement in scientific or academic journal etc***

44. This section creates a new defence of qualified privilege relating to peer-reviewed material in scientific or academic journals (whether published in electronic form or otherwise). The term “scientific journal” would include medical and engineering journals.
45. *Subsections (1) to (3)* provide for the defence to apply where two conditions are met. These are condition 1: that the statement relates to a scientific or academic matter; and condition 2: that before the statement was published in the journal an independent review of the statement’s scientific or academic merit was carried out by the editor of the journal and one or more persons with expertise in the scientific or academic matter concerned. The requirements in condition 2 are intended to reflect the core aspects of a responsible peer-review process. *Subsection (8)* provides that the reference to “the editor of the journal” is to be read, in the case of a journal with more than one editor, as a reference to the editor or editors who were responsible for deciding to publish the statement concerned. This may be relevant where a board of editors is responsible for decision-making.
46. *Subsection (4)* extends the protection offered by the defence to publications in the same journal of any assessment of the scientific or academic merit of a peer-reviewed statement, provided the assessment was written by one or more of the persons who carried out the independent review of the statement, and the assessment was written in the course of that review. This is intended to ensure that the privilege is available not only to the author of the peer-reviewed statement, but also to those who have conducted the independent review who will need to assess, for example, the papers originally submitted by the author and may need to comment.
47. *Subsection (5)* provides that the privilege given by the section to peer-reviewed statements and related assessments also extends to the publication of a fair and accurate copy of, extract from or summary of the statement or assessment concerned.
48. By *subsection (6)* the privilege given by the section is lost if the publication is shown to be made with malice. This reflects the condition attaching to other forms of qualified privilege. *Subsection (7)(b)* has been included to ensure that the new section is not read as preventing a person who publishes a statement in a scientific or academic journal from relying on other forms of privilege, such as the privilege conferred under section 7(9) to fair and accurate reports etc of proceedings at a scientific or academic conference.