‘Trivial issues’ the focus of defamation law reform

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Scotland has become the latest Commonwealth country to back potential changes to its defamation laws in a move local legal experts say has lessons for Australia.

Like other countries including Australia, Scotland is grappling with how to update its defamation law for the age of social media. The popularity of Facebook, Twitter and other social media platforms has led to a rise in costly “back-yarder” claims involving arguably frivolous allegations.

“Defamation law potentially affects everyone and it is crucial that we ensure the law is fit for modern Scotland,” said Scottish Minister for Community Safety and Legal Affairs Ash Denham as she announced a round of public consultations last week.

“The enormous growth in the use of social media presents new challenges and means that defamatory communication is becoming increasingly instant and common.”

One major change under consideration in Scotland to address the growth of online media is a one-year limitation period on claims, down from three years at present.

Australia also has a one-year limitation period for defamation claims, but it is often ineffective because it restarts each time the defamatory material is communicated to new people. That communication can be as simple as one new reader accessing an online article.

The Scottish consultation paper raises a potential solution which has been adopted in England which is a single publication rule that ensures the limitation period starts running when the material is first published and does not restart.

Media bosses and federal Labor have indicated they would support the introduction of such a rule here, arguing it would facilitate more investigative journalism by reducing legal costs associated with defamation claims filed long after the allegations were originally published.

NSW is leading a national review of Australia’s defamation laws which operate across state and federal jurisdictions. University of Sydney defamation law expert Professor David Rolph said Australia, which saw an abortive review of defamation law in 2011, would benefit from understanding other countries’ more deliberate reform as the law battles to keep up with technological changes.

“Like the English law reform process before it, and the current Ontario law reform process, there is much to learn from the Scottish law reform process. Sound law reform in this area cannot be rushed,” Professor Rolph said.

“Defamation law is too complex and the challenges posed by rapidly changing technologies are too complex. Hasty reform may lead to unintended consequences.”

Among mooted changes in Scotland is the introduction of a threshold of serious harm to prevent plaintiffs bringing claims over trivial insults.

The Scottish paper raises a potential solution