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COMMUNITY LEGAL CENTRE

Defamation

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INTRODUCTION

In Queensland, a claim for defamation may be made by a living person, a not-for-profit corporation or a corporation with less than 10 employees if a defamatory matter is published by another person (including a large corporation).

Whether a matter is defamatory is a question of fact to be determined by a court considering several judicial principles such as whether the relevant person's reputation was negatively affected, whether they experienced undesirable behaviour of others towards them or whether they have been shunned, ridiculed or hated because of the matter published.

The information in this chapter is intended as a general overview and is not intended to be a substitute for professional legal advice. A person concerned about defamation should seek specific advice from a solicitor.

Potential Changes to the Defamation Act

In October 2025, the Defamation and Other Legislation Amendment Bill 2025 (2025 Bill) was referred to the Queensland Parliamentary Committee for consideration. The proposed amendments will align Queensland's defamation laws with those in other Australian jurisdictions.

Notably, the 2025 Bill proposes to:

- exempt digital intermediaries from defamation for the publication of digital matter in certain circumstances (e.g. they did not take an active role in the publication)
- introduce a defence for digital intermediaries (e.g. passive social media platforms, online administrators and search engines) where defamatory material is posted by a third party. This defence will be available provided that the digital intermediaries take reasonable steps to remove or prevent access to the matter either before or within seven days of receiving the complaint to remove or restrict access to the material
- expand the court's powers to order the removal of defamatory content and to identify anonymous posters, even when the digital intermediaries are not party to the proceeding
- protect victims of sexual harassment and assault who speak up in good faith from defamation proceedings where the incident has been reported to the police
- amend the criminal defamation offence in s 365 of the *Criminal Code Act 1899* (Qld) to reflect the new defence for digital intermediaries and new statutory exemptions from liability.

DEFAMATION: WHAT YOU NEED TO KNOW

Defamatory matter

Whether a matter is defamatory is a question of fact to be determined by a court considering several judicial principles, the most common being whether reasonable members of the community either seeing, hearing or reading the matter will likely:

- lead to a lowering of the relevant person's reputation
- lead others to think less of them
- make others shun or avoid them
- cause others to ridicule, hate or despise them.

Serious harm

Following amendments made to the law of defamation on 1 July 2021, the person must also prove that they suffered 'serious harm' because of any defamatory matter published after that date. If they cannot get over this threshold, they cannot commence or continue defamation proceedings in court.

Method of publication

The method of publication is very broad and can include spoken words, written communications in books, newspapers, the internet, emails, posts on social media, tweets or text messages, photographs, cartoons, emojis or other images and even gestures.

Defences

Even if something is defamatory, the person who published the defamatory matter may have a defence and be protected from claims of defamation, for example if the content of the matter is true (or substantially true) or is spoken by a politician in parliament.

Remedies

If the court finds a person has defamed another person, it can order the person to pay monetary compensation (damages) to the person who has been defamed. The amount of the damages will depend on the loss suffered by the defamed person. The court is required to ensure that there is an appropriate and rational relationship between the serious harm sustained by the defamed person and the amount of damages awarded. The court also has power to grant an injunction to

prevent the publication of defamatory matter or to restrain repetition or continuing publication of defamatory matter.

The maximum amount of damages to be awarded for non-economic loss in defamation proceedings is \$500 000 (this amount is current as of 1 July 2025 and may be subject to change). The maximum damages amount is only awarded in the most serious cases.

Defamation claim

A claim for defamation:

- must be made in either the District or Supreme Court and may involve a jury
- must prove more than minor or trivial reputation harm to have occurred by a defamatory publication
- must prove that the defamatory publication has caused, or is likely to cause, serious harm to the reputation of the defamed person
- must prove serious harm by reference to the consequences of the publication, rather than the publication itself
- cannot be commenced until a Concerns Notice has been given to the proposed defendant, which informs them of the defamatory imputations alleged and the serious harm that has been caused or likely to be caused by the defamatory publication
- must not be commenced until the period in which the defendant can make an offer of amends has elapsed
- must be commenced within one year from the date of the publication of the matter (s 10AA *Limitation of Actions Act 1974* (Qld)) (although the court has power to extend the period by up to three years if it is satisfied that it was not reasonable in the circumstances to have commenced the action within one year)
- can result in a court ordering the unsuccessful party to pay the legal costs of the other party.

If someone has published or said something about you that others have seen or heard, and depending on the content of those words or images, in addition to a possible claim for defamation you may also have other legal avenues to consider, for example if the matters:

- are being experienced in the workplace
- relate to your race, sexuality, religion or a disability
- are of a threatening or violent nature. If you do not feel safe, call police

- include graphic photographs of you in a private act (e.g. showering or in a state of undress), call police.

If you need something removed from a social media site, the eSafety Commission publishes a list of social media services safety centres, which provides information and contacts to assist you to make a complaint to the relevant website and ask for content to be removed. Prior to having the content removed, you should retain a copy of the content (e.g. take a screenshot or print the material).

Additionally, you may be able to report 'seriously harmful' online abuse to the eSafety Commission's Adult Cyber Abuse Scheme. This Scheme is intended to be used when the relevant online platform fails to act on reports of seriously harmful online abuse. Purely reputational matters are not part of the Adult Cyber Abuse Scheme. However, if material posted is defamatory and also meets the threshold of adult cyber abuse (i.e. seriously harmful), then it may fall within the scheme.

Defamation case example

Mickle v Farley [2013] NSWDC 295

Mr Farley, a former student at a high school in New South Wales, published a number of comments on Facebook and Twitter about the music teacher at his former high school. The comments were found to be untrue and had a devastating effect on the music teacher. The court ordered the former student to pay the teacher the sum of \$105 000. Obviously, the defamatory comments were published before the introduction of the 'serious harm' test in July 2021.

Burrows v Houda [2020] NSWDC 485

The court ruled that emojis can be considered as defamatory.

In this case, Mr Houda tweeted a link to a newspaper article. Several third parties replied to the original tweet and included emojis within their comments. The court found that the words and emojis in the comments and replies were capable of being defamatory and that an ordinary reasonable reader of tweets would come to that view. This was a case of joining the dots on social media between the emojis used and the surrounding context, which included links to articles posted in the original tweet.

A social media account holder can be a publisher of comments and replies where they have sufficient control of the account and particularly when they encourage third parties to post comments (*Fairfax Media Publications Pty Ltd v Voller*; *Nationwide News Pty Limited v Voller*; *Australian News Channel Pty Ltd v Voller* [2021] HCA 27). Therefore, Mr Houda was the responsible publisher for the comments on his tweet.

Peros v Nationwide News Pty Ltd (No 3) [2024] QSC 192

Mr Peros brought defamation proceedings over a podcast episode (Episode 13), which he claimed imputed that he was guilty of murdering his ex-partner, Shandee Blackburn. The proceedings were brought against the publisher of the podcast series (Nationwide News Pty Ltd), its producer and the sister of Ms Blackburn (the defendants).

For context, some years prior to the proceedings, Mr Peros had been acquitted of murdering Ms Blackburn. Following this, a coroner conducted an investigation and found that Ms Blackburn died due to a violent incident involving Peros using a bladed instrument. This finding was widely reported, including in the podcast.

Section 10A of the *Defamation Act 2005* (Qld) required Mr Peros to prove that Episode 13 caused, or was likely to cause, 'serious harm' to his reputation.

The court dismissed the proceedings and held that Mr Peros had not met the serious-harm threshold to bring a defamation claim. This was because Mr Peros's reputation had already been significantly harmed by the coroner's findings and earlier coverage, consequently the court was not persuaded that Episode 13 had caused sufficient further harm to Mr Peros's reputation to amount to serious harm. However, the court noted that if Episode 13 had been a stand-alone publication, then the serious-harm test may have been met.

Lehrmann v Network Ten Pty Limited [2024] FCA 369 (Trial Judgement)

Mr Lehrmann has appealed this decision and the appeal was part-heard in August 2025, and judgement is reserved.

[Warning: discusses rape and sexual assault]

Mr Lehrmann brought defamation proceedings against Network Ten Pty Limited and Lisa Wilkinson (the defendants) in relation to an episode of Network Ten's program, the Project. Mr Lehrmann claimed that the episode imputed that he was guilty of raping Brittany Higgins.

The episode aired in 2021, following a news story about Ms Higgins's allegations of rape at Parliament House, where both she and Mr Lehrmann were employed. Later that year, criminal proceedings were brought against Mr Lehrmann for allegedly engaging in sexual intercourse with Ms Higgins without her consent. During the trial, the jury were discharged due to juror misconduct, and the proceedings were discontinued.

In this defamation case, the defendants raised the defence of substantial truth. The court dismissed the case and held that the defence was made out by the defendants. It was determined, on the balance of probabilities, that Mr Lehrmann did rape Ms Higgins. In his judgement, Justice Lee referred to the fact that after

avoiding criminal prosecution, Mr Lehrmann decided to bring the defamation proceedings, remarking that '[h]aving escaped the lions' den, Mr Lehrmann made the mistake of going back for his hat'.

This judgment did not equate to a criminal conviction, but did find that, on the balance of probabilities, Lehrmann raped Ms Higgins in a civil context.

THE LAW RELATING TO DEFAMATION IN QUEENSLAND

The law relating to defamation in Queensland is found in the Defamation Act and the common law.

The Defamation Act does not affect the operation of the common law except as specifically provided for in s 3 of the Defamation Act. The purpose of the Defamation Act is to ensure that the law of defamation in Queensland is consistent with the rest of Australia, and to:

- strike the right balance between protecting reputations and ensuring that the law does not place unreasonable restrictions on freedom of expression
- provide fair remedies
- encourage non-litigious methods of resolving disputes (s 3 Defamation Act).

The Defamation Act applies to any defamatory matter published on or after 1 January 2006. It will also apply to defamatory matters published after 1 January 2006 that are raised in proceedings that include other causes of action that accrued before 1 January 2006 (but no later than one year after the action accrued), provided that each action arose out of the publication of the same or substantially the same matter on different occasions (s 49 Defamation Act).

Is Queensland law the correct choice?

Each Australian state and territory has its own laws for defamation. The Defamation Act sets out the rules for determining the state or territory in which a claim for defamation should be commenced (s 11 Defamation Act). Generally, the claim should be brought in the state or territory in which the defamatory matter was published. If the matter was published in multiple places (e.g. on Facebook to friends living throughout Australia), then the relevant law to be applied is the law of the place in which the harm occasioned by the publication as a whole has its closest connection (s 11 Defamation Act). Depending on the specific circumstances, this is likely to be the state or territory in which the person claiming defamation lives or works.

DECLARING SOMETHING AS DEFAMATORY

There is no one test for determining whether something is defamatory. The courts often ask whether in the view of reasonable members of the community either seeing, hearing or reading the matter will likely:

- cause serious harm to the relevant person's reputation
- lead others to think less of them
- make others shun or avoid them
- cause others to ridicule, hate or despise them.

Depending upon the context in which a matter is communicated, it may be possible to accidentally defame another person. Even if a person is not named or if the work is a piece of fiction or sarcasm, a cause of action for defamation may arise if the matter can reasonably be inferred to be about a specific person.

The person communicating the matter does not need to intend that any harm be done to another person. The court looks at the precise terms of what was communicated, the circumstances in which the communication occurred and how a reasonable member of the community would interpret the communication in that context.

There are other tests applied by the courts, and if you are considering making a claim we recommend you seek specific legal advice.

FORM OF COMMUNICATING DEFAMATORY MATTER

Publishing a matter can include a gesture, tweet, retweet or even an emoji.

The communication that causes the defamation can come in many forms. It does not need to be published in a newspaper or be in writing, it can be a verbal communication, a cartoon or photograph. It can be published on the internet, on social media or it can be contained in text messages, a letter or emails.

In the case of *Dow Jones & Company Inc v Gutnick* [2002] HCA 56, the High Court considered that the same laws that apply to defamation in other types of publications apply to publications on the internet.

A 'matter', as defined in sch 5 of the Defamation Act, includes:

- an article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical
- a program, report, advertisement or other thing communicated by means of television, radio, the internet or any other form of electronic communication
- a letter, note or other writing

- a picture, gesture or oral utterance
- any other material thing by means of which something may be communicated to a person.

WHO CAN BRING AN ACTION FOR DEFAMATION?

To bring a defamation action you must be a:

- living person
- not-for-profit corporation
- corporation that employs fewer than 10 persons and that is not related to another corporation (ss 9, 10 Defamation Act).

If you are a person or entity listed above, you can bring the action against any living person or a corporation, however, a large multinational corporation cannot bring a defamation action against an individual.

Generally, defaming a class or group of persons rather than a named individual is not enough to bring a defamation action, unless it is reasonably possible to infer the defamatory words refer to each and every member of the group. In *Bjelke-Petersen v Warburton* [1987] 2 Qd R 465, the leader and deputy leader of the opposition accused the government of corruption, referring to the ministers at the time as ‘blokes’ with ‘their hands in the till’. The words were found to be capable of referring to all 18 members of the government at the time. The small size of the group, generality and extravagance of the claims were all relevant in deciding that each minister had a valid cause of action.

WHO CAN BE A PUBLISHER?

A publisher is anyone who communicates defamatory matter to a third party.

Set out below are some case examples where consideration was given to who can be a publisher.

In the case of *Fairfax Media Publications Pty Ltd v Voller; Nationwide News Pty Limited v Voller; Australian News Channel Pty Ltd v Voller* [2021] HCA 27, Mr Voller commenced defamation proceedings against three media companies regarding comments posted by third parties about him on the respective Facebook pages of the media companies. The High Court found that the media companies were publishers of comments made by others on their public Facebook pages. The acts of the media companies in facilitating, encouraging and thereby assisting the posting of comments by Facebook users determined that the media companies were publishers of those comments. Companies cannot rely on lack of knowledge of the material posted (or lack of intention to publish them)

on their social media pages to deny that they are responsible for publishing the third-party comments.

In contrast to the outcome in *Voller*, in the case of *Google LLC v Defteros* [2022] HCA the defendant (Google LLC) was found not to be a publisher. Google LLC had been accused of defaming a pub bouncer turned criminal lawyer for providing the search result of a defamatory article concerning the lawyer. The High Court found that Google LLC acted as reference provider only and had no participation in any way in publishing the article.

DEFENDING CLAIMS OF DEFAMATION

If you have been accused of saying or publishing something defamatory, there may be several defences available to you. In the reverse, prior to making a defamation claim you should think about the defences that may be available to the publisher to ensure that your claim can proceed.

The defences are designed to ensure that defamation suits do not put unreasonable limits on free speech and to ensure that the business of the courts and governments can proceed without the risk of unworthy or trivial defamation claims being made.

According to the Defamation Act and the common law, defences include:

- justification
- contextual truth
- absolute privilege
- public documents
- fair report of proceedings of public concern
- public interest defence
- qualified privilege
- honest opinion
- innocent dissemination
- peer review.

Justification

It is a defence to a claim of defamation if you can prove that the matter is substantially true (i.e. true in substance or not materially different from the truth) (s 25 Defamation Act).

For a case example see *Cross v Queensland Newspapers Pty Ltd* [2008] NSWCA 80, where a newspaper published comments that a Gold Coast real estate agent was ripping off investors by selling properties at exorbitant prices. The court found (after looking closely at the practices and the sales by Mr Cross) that there was not enough evidence to show that he was ripping off investors by selling properties at exorbitant prices. Mr Cross was therefore successful in his claim against the newspapers.

Also, in *Caccavo v Daft* [2006] TASSC 36, the court said:

The justification plea does not need to allege the truth of every last meticulous detail of the plaintiff's drafted imputation, but sufficient must be alleged so that if proved the truth of the sting of the imputation will be established.

Contextual truth

The defence of contextual truth applies where there is a publication that has a number of defamatory meanings, some of which are true and some are not, but the untruthful meanings do no further harm to the reputation of the defamed person because of the meanings found to have been true (s 26 Defamation Act).

Absolute privilege

This defence applies to matters spoken in the course of a court or tribunal proceeding and matters published by politicians when they are in parliament (s 27 Defamation Act).

Public documents

This defence applies where the defamatory matter was:

- contained in a public document (e.g. court judgments, legislation, documents issued by the government or reports prepared for parliament)
- published honestly for the information of the public or the advancement of education (s 28 Defamation Act).

Fair report of proceedings of public concern

This defence applies where the defamatory matter was, or was contained in, a fair report of any proceedings of public concern (s 29 Defamation Act). Proceedings of public concern include things such as proceedings in public (e.g. a parliamentary body, court, tribunal or local government).

Public interest

This statutory defence applies when the defendant can show:

- the matter concerns an issue of public interest and

- the defendant held an earnest subjective belief the publications would be in the public interest and
- that belief was reasonably reached, with a focus on the publisher's conduct to inform themselves.

A court must consider all circumstances of the case in determining whether the defence is established (s 29A Defamation Act).

For example, in the case of *Russell v Australian Broadcasting Corporation (No 3)* [2023] FCA 1223, a former ADF special-forces officer sued the ABC and two journalists over publications alleging he and his platoon were under active investigation for war crimes in Afghanistan. The section 29A public interest defense was raised.

Lee J found that while the matter was one objectively of public interest and the defendants subjectively believed it to be so, the belief was not reasonable. The article overstated the strength of evidence relied upon, failed to distinguish allegation from fact, inadequately sought a response from Russell and was published urgently. Importantly, to rely on this defense, publishers must be able to prove that reasonable enquiries were made to come to their belief of the truth of their publications. The public interest defense failed, and the plaintiff was awarded damages.

Qualified privilege

Unlike the defence of absolute privilege, this is a defence that turns on the particular facts. The Defamation Act provides that this defence applies if the:

- person receiving the defamatory matter has an interest in having that information on a particular subject
- matter is published to that person in the course of being given information on that particular subject
- conduct of the person publishing the matter is reasonable in the circumstances (s 30 Defamation Act).

Examples where qualified privilege could apply are:

- the collection of information by police officers when investigating a crime
- the giving of a reference.

The defence cannot be used to justify malice, that is if the matter has been published for an improper purpose or motive, with an intention to cause harm, or with reckless indifference as to its truth or falsity.

The High Court considered the common law defence of qualified privilege in a matter involving the radio station 2GB (*Harbour Radio Pty Ltd v Trad* [2012] HCA 44). In that case, at a protest held shortly after the Cronulla Riots, Mr Trad (the plaintiff) spoke to the audience and said there is ‘... a great deal of shame in tabloid journalism ...’ and that ‘... one talk-back radio station ... seems to be nothing other than the mouthpiece of the Howard government over the last few years’.

The next day a 2GB journalist who had attended the rally spoke of Mr Trad’s comments on the radio.

The court found that the imputations that could be made from the 2GB broadcast about Mr Trad was he:

- stirred up hatred against a 2GB reporter, which caused him to have concerns about his own personal safety
- incites people to commit acts of violence
- incites people to have racist attitudes
- is a dangerous individual
- is a disgraceful individual
- is widely perceived as a pest
- deliberately gives out misinformation about the Islamic community
- attacks those people who once gave him a privileged position.

Ultimately, the High Court found that 2GB had a defence of qualified privilege for all of the above except with respect to ‘is widely perceived as a pest’ and ‘attacks those people who once gave him a privileged position’. The court said:

Mr Trad had attacked 2GB by placing at least part of the blame for the Cronulla Riots upon the tabloid journalism practised by one particular talk-back radio station, namely 2GB. It was a relevant and reasonable response by 2GB to direct attention to the credibility of the attacker by imputing hypocrisy to Mr Trad as one who himself incited people to commit acts of violence and to have racist attitudes, and as one who at the peace rally had stirred up hatred against a 2GB reporter, causing him concern about his personal safety.

Honest opinion

This defence applies where the defamatory matter was an expression of opinion rather than a statement or fact, relates to a matter of public interest and is based on material that is substantially true, public documents or material published under the protection of absolute privilege (s 31(1) Defamation Act). This defence will also apply where the matter was an expression of opinion of an employee or

agent of the person who published the matter, or where the matter was an expression of opinion of a person other than an agent or employee (s 31(2)-(3) Defamation Act).

Section 31(1)(c) of the Defamation Act requires that the honest opinion be based on proper material.

This means the material on which it is based is:

- set out in specific or general terms in the published matter or
- notorious
- accessible from a reference or link in the published matter or
- otherwise apparent from the context; and
- the material is:
 - substantially true or
 - published on an occasion of absolute or qualified privilege or
 - protected by ss 28 or 29 of the Defamation Act (public documents, fair report of proceedings of public concern).

Innocent dissemination

This defence applies if the person who published the defamatory matter did so in the capacity, or as an employee or agent, of a subordinate distributor. The person who published the defamatory matter must also neither have known, nor ought reasonably to have known, that the matter was defamatory and their lack of knowledge must not be due to any negligence on their part (s 32 Defamation Act).

A person is a subordinate distributor if they:

- were not the first or primary distributor of the matter
- were not the author or originator of the matter
- did not have any capacity to exercise editorial control over the content or the publication of the matter before it was first published.

A person will generally not be the first or primary publisher of any matter if they are merely a bookseller, librarian, broadcaster or an internet service provider. The internet service provider would not be treated as the first or primary distributor of a defamatory matter that is contained in an email sent using the service, unless the service provider was the author or originator of the matter or had the capacity to exercise editorial control over the matter.

Peer review

This defence applies when:

- the matter is published in a scientific or academic journal (published in an electronic form or otherwise)
- the matter relates to a scientific or academic issue
- an independent review of the matter's scientific or academic merit was carried out before publication by:
 - the editor, if they have expertise in the scientific or academic issue concerned
 - one or more persons with such expertise.

This defence also protects publication of assessment of the matter in the same journal by a reviewer written in the course of the review and fair summary of or fair extract from such matters.

RESOLVING DEFAMATION DISPUTES WITHOUT GOING TO COURT

Before commencing court proceedings, you should consider whether the matter can be resolved without the need for litigation. The Defamation Act sets out a process to assist resolution of disputes without going to court.

It is important when trying to resolve a dispute that you protect your option to commence proceedings in a court if the matter cannot be resolved. You must keep copies of all letters and emails between the parties about the matter and keep a copy of the defamatory matter. If you seek legal advice, ensure you take this correspondence and the defamatory matter with you to see the lawyer.

Steps to take if someone has published something defamatory

If a person has published something defamatory, it is compulsory for the aggrieved person to first issue a Concerns Notice. A Concerns Notice must:

- be in writing
- specify the location where the defamatory matter in question can be accessed (e.g. the webpage address)
- particularise the defamatory meanings that the aggrieved person considers were conveyed by the matter. For example, if a person writes on Facebook that you 'stole some money' the meanings arguably conveyed by the statement are that you are dishonest, untruthful and guilty of a crime

- inform the publisher of the harm that the person considers to be serious to the person's reputation
- if the aggrieved person is an excluded corporation, inform the publisher of the financial loss that the corporation considers to be serious financial loss caused, or likely to be caused, by the publication of the matter in question.

When issuing a Concerns Notice, if practicable, provide the publisher with a copy of the matter in question together with the notice.

A Concerns Notice must also set out what you require the person who published the defamatory matter to do, for example:

- remove the defamatory matter within a specific timeframe and cease publishing defamatory matter
- provide an apology to be published to the same audience that received the defamatory matter. If you are seeking a public apology, you should require that the content of the apology is approved by you before it is published
- pay financial compensation for any economic or non-economic loss from a result of the publication of the defamatory matter. If the aggrieved person makes an offer to the publisher to make amends (including payment of any compensation under the offer) and that offer is accepted by the publisher, the aggrieved person cannot assert, continue or enforce an action for defamation against the publisher in relation to the matter in question (even if the offer was limited to certain defamatory imputations).

There are also some practical steps you can take in relation to matters published on social media. The eSafety Commission has published links to the safety centres for major social media services including Facebook, Snapchat, Instagram and Twitter. The safety centres on these sites can assist you to report abuse or content you find offensive, and will also assist you in having this type of content removed.

Remember that if the material published includes pictures of you in a private act (e.g. getting changed, having sex or going to the toilet), you should also contact police.

Steps to take if you are accused of publishing a defamatory matter

When you receive a Concerns Notice, you should consider whether the matter being complained of is malicious and will or is likely to cause serious harm to that person's reputation. Consider the context in which the matter was published and whether you may have a defence. You should seek legal advice.

If, on reflection, you consider that you cannot justify the matter and that the matter you published could cause serious harm to that person's reputation, you should consider making an offer to make amends (s 13 Defamation Act). To fall within the process in the Defamation Act, you need to make this offer within 28 days of receiving the Concerns Notice. The offer to make amends needs to:

- be in writing
- clearly refer to the Concerns Notice and state that your response is an offer to make amends
- provide for the offer to be open for acceptance for at least 28 days commencing on the day the offer is made
- clearly state which matters you are making an offer for. If there are some matters you do not agree were defamatory, this should be made clear
- set out an expiry date for the offer
- include an offer to pay the expenses reasonably incurred by the aggrieved person before the offer was made and expenses reasonably incurred by the aggrieved person in considering the offer.

If the Concerns Notice has set out steps the person claiming the defamation requires from you, consider which of these steps you can accept. You do not have to accept all the other person's requirements. However, if the matter you published could be defamatory, you should consider:

- removing any matter from the public domain
- apologising for the defamatory matter
- agreeing not to repeat the matters.

Include a date by which you require a response, for example '... this offer is capable of being accepted on or before [date]'.

In your response to a Concerns Notice, you should mark the letter 'Without Prejudice Save as to Costs'. This means that if you cannot resolve the dispute and the matter goes to court, the contents of the letter cannot be used against you. Section 13 of the Defamation Act also provides protection on this point if you do not include these words.

In addition, subject to certain exceptions, evidence of any statement or admission made in connection with making or accepting an offer to make amends is not admissible as evidence in criminal or civil proceedings (s 19 Defamation Act).

Withdrawal of offer to make amends

If you have made an offer to make amends, you may withdraw this offer or make a renewed offer to make amends after the expiry of an agreed period (specified in your offer), provided that the renewed offer is made within 14 days after the earlier offer has been withdrawn (or within a further agreed period), and the renewed offer is a genuine attempt by the publisher to address the matters of concern raised by the aggrieved person about an earlier offer (s 16 Defamation Act).

Failure to accept a reasonable offer

If an offer of amends is made but not accepted, it is a defence to a defamation action if the publisher made an offer to make amends as soon as practicable and was ready and willing to carry out the terms of the offer that was reasonable in the circumstances. In determining whether an offer to make amends is reasonable, a court must have regard to any correction or apology published (s 18 Defamation Act).

Accepting a reasonable offer and ending defamatory action

If the offer to make amends is accepted and the publisher performs their obligations under the offer, the person asserting the defamation cannot continue to assert or enforce the defamatory action. It is important that, if the matters are resolved, the scope of the offer to make amends is clear and agreed between the parties.

Saying sorry is not necessarily an admission that you published something defamatory.

The Defamation Act provides some protection in relation to making apologies. An apology made by, or on behalf of, a person will not constitute an express or implied admission of fault or liability (s 20 Defamation Act), and it will not be relevant to determining fault or liability in connection with any defamatory matter alleged to have been published.

The purpose of this provision is to encourage apologies without fear that an apology will give rise to a claim that because you apologised you must have published something defamatory.

GOING TO COURT WITH A DEFAMATION CLAIM

Defamation proceedings can either be heard in the District or Supreme Court. If the damages being claimed are less than \$750 000 then the proceedings should be commenced in the District Court (s 68 *District Court of Queensland Act 1967* (Qld)). Proceedings are commenced with a claim and a statement of claim

filed at the court registry. If you receive a claim and a statement of claim, you need to seek legal advice. A defence to the claim must be filed and served within 28 days of the claim and statement of claim being served upon you.

The role of jury and judicial officers

Either party in defamation proceedings in the Supreme Court or District Court may elect to have the proceedings determined by a jury, unless the court orders otherwise.

A court may order that defamation proceedings are not to be tried by jury if the trial:

- requires a prolonged examination of records
- involves any technical, scientific or other issue that cannot be conveniently considered and resolved by a jury.

Where an election has been made by the parties to have the matter determined by a jury, the party who made that election can unilaterally abandon that election by advising the other party of this decision (see *Kencian v Watney* [2015] QCA 212). However, an election may be revoked only:

- with the consent of all the parties to the proceedings
- if all the parties do not consent, with the leave of the court.

If the case involves a jury, the role of the jury is limited to determining whether the aggrieved person has been defamed (s 22 Defamation Act). This decision will be made having regard to whether defamatory matter about the aggrieved person was published and whether any defence has been established by the publisher. In this circumstance, the determination of the amount of damages to be awarded is the responsibility of the judge and not the jury.

The jury is not permitted to determine other issues that are to be determined by the judge. This includes, for example, whether the defamatory matter was published on an occasion of absolute or qualified privilege for the purposes of a defence.

It is a question for the jury whether the truth of an imputation is substantially made out.

ORDERS BY A COURT IN A DEFAMATION CLAIM

A court can order the removal of material. The court can also restrict any future publication of a matter and award monetary compensation (damages).

In determining an amount of damages to be awarded for defamation, the court must ensure that there is an appropriate and rational link between the harm

sustained by the aggrieved person and the amount of damages awarded (s 34 Defamation Act 2005 (Qld) (Defamation Act)). Exemplary or punitive damages (which are used to punish an offender) cannot be awarded in defamation cases (s 37 Defamation Act). If more than one action has been brought to court, the court may assess damages as a single sum (s 39 Defamation Act).

The court will generally disregard the malice or other state of mind of the publisher at the time the matter was published to which the proceedings relate (s 36 Defamation Act).

Limits on the damages that can be claimed

The maximum amount of damages to be awarded for non-economic loss in defamation proceedings is \$500 000 (this amount is current as of 1 July 2025 and may be subject to change). The maximum damages amount is only awarded in the most serious cases.

A court will not be permitted to order a publisher to pay damages that exceed this maximum unless it is satisfied that the circumstances of the publication of the matter warrant an award of aggravated damages (s 35 Defamation Act). Any award for aggravated damages will be made separately to any award of damages for non-economic loss.

Mitigation of damages

Factors that a court may consider in mitigation of damages include whether the publisher has made an apology about the publication or published a correction of the defamatory matter.

Determining factors may also include whether the aggrieved person, in relation to any other publication of matter having the same meaning or effect as the defamatory matter, has recovered damages, brought proceedings for damages, or received or agreed to receive compensation (s 38 Defamation Act).

Costs

If you proceed with a defamation action and are not successful, or if you are found to have defamed a person, in most cases the court will require you to pay the legal costs of the other party. The costs are usually calculated on a standard basis by a costs assessor and are determined by the costs that are ‘... necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being assessed ...’ (r 702(2) *Uniform Civil Procedure Rules 1999* (Qld)).

The court is also able to award costs on an indemnity basis, which means you are required to pay the full legal costs of the other party. When determining a costs award, the court will consider the way in which the parties conducted their case and any other matter the court considers relevant (s 40 Defamation Act).

Limitation of actions

A limitation period of one year applies for civil actions for defamation, subject to an extension of up to three years if a court is satisfied that it was not reasonable in the circumstances to have commenced the action within one year. This means that you must commence your claim within this time, otherwise you cannot bring your claim.

A single-publication rule was introduced on 1 July 2021. It requires that the start date for the one-year limitation period is the date that the material is first published. If the same or substantially similar material is published by the first publisher or an associate of theirs at a later date, that will not be considered a new publication for the purposes of the limitation period. However, this does not apply if the manner of publication in a subsequent publication is materially different from that of the first publication.

CRIMINAL DEFAMATION

The *Criminal Code Act 1899* (Qld) (Criminal Code) makes it a misdemeanour for a person to publish defamatory matter about another living person if they:

- know the matter to be false or have no regard to whether the matter is true or false
- intend to cause serious harm to the relevant person or any other person, or have no regard to whether serious harm to the relevant person or any other person is caused.

The maximum penalty is three years imprisonment (sch 1 s 365 Criminal Code).

Criminal defamation might arise in the context of a publication made maliciously to incite violence or panic. For example, a false rumour of a terrorist attack by a religious group.

LEGAL NOTICES

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