Defamation laws

Legal information for community organisations

This fact sheet covers:

- what is defamation?
- who can be defamed?
- who can be sued for defamation?
- common defences
- concerns notices
- apologies and offers to a make amends

Organisations that publish information, including online, should be aware of the risks of publishing defamatory material.

Disclaimer

This fact sheet provides general information about defamation laws. This information is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to the full disclaimer that applies to this fact sheet.

What is defamation?

Defamation refers to the injury of an organisation or person's reputation (a civil wrong or 'tort') without a lawful reason or defence.

Defamation laws aim to balance freedom of expression with the protection of reputation.

It's important for not-for-profit organisations to understand the risks of publishing potentially defamatory material, including online on social media. Defending a defamation claim can be stressful, costly and time-consuming.

Not-for-profit organisations may also want to understand their options when the organisation, or a person involved in the organisation, believes they have been defamed.

Defamation is a very technical area of law which has differences between states and territories. It's therefore important to seek advice early so you can make an informed decision.

Defamation law reform

A review of defamation law in Australia led by NSW in 2019-2020 proposed a set of amendments in two phases (**Model Defamation Amendment Provisions**).

The intention is that all states and territories will pass the Model Defamation Amendment Provisions, to provide uniform legislation across Australia.

The goal of the **phase one reforms** is to reduce the number of minor matters going to court and promote more effective ways to resolve defamation disputes quickly and cheaply without court intervention.

On 1 July 2021, phase one reforms came into effect in New South Wales, Victoria, Queensland and South Australia.

These reforms:

- introduce a 'serious harm' threshold element, a 'single publication' rule, and the new public interest defence, and
- amend the damages cap and required mandatory concerns notices procedure

On 1 July 2024, **phase 2 reforms** came into effect in New South Wales.

Shortly after, the phase 2 reforms were implemented in the Australian Capital Territory and Victoria.

These reforms:

- define who is a 'digital intermediary' and offer a new defence for digital intermediaries to limit their liability
- address statutory exemptions from liability for digital intermediaries, and
- provide absolute privilege in reports of illegal and unlawful conduct to police, statutory investigative bodies, employers and disciplinary tribunals

Western Australia, Tasmania, the ACT and the Northern Territory haven't enacted these reforms yet.

Defamation laws in Australia

Uniform defamation laws were last enacted by Australian states and territories in 2005 (**uniform defamation laws**).

Since then, due to the increased use of the internet social media, the act of publication has become easier, more accessible and widespread. This has resulted in an increase in smaller defamation claims between parties (commonly called 'backyard fence' disputes).

Despite the Model Defamation Amendment Provisions, some differences in the various state and territory laws remain.

In addition to the legislation in each state and territory, courts are still guided by previous court decisions (known as the 'common law'), where those court decisions are not inconsistent with the legislation.

The elements of a defamation claim

Defamation refers to the injury of an organisation or person's reputation (a civil wrong or 'tort') without a lawful reason or defence.

A successful defamation claim must prove the following elements:

1.	the **subject matter** has been **published** to a third party or parties
2.	the subject matter is **about the person or organisation claiming they have been defamed** (the plaintiff) in that the person or organisation is identifiable (expressly or impliedly) by the published subject matter
3.	the subject matter **conveys defamatory meaning** (legally referred to as 'imputations') about the plaintiff, and
4.	the subject matter **causes, or is likely to cause, serious harm** to the reputation of the plaintiff (applies in NSW, Victoria, Queensland and SA)

Who is the plaintiff?

The plaintiff is the person or organisation claiming they have been defamed.

Each of the defamation elements, and the available defences, are discussed below.

If the defamation elements are proven in court, and no defence applies, an award of damages (a sum of money) can be granted by the court.

A court will seek to award damages that are proportionate to the extent of harm caused to the plaintiff's reputation.

Part of the policy justifications for the 2021 legislative reforms to defamation laws was to prevent low damages awards which were far outweighed by the legal costs incurred by the parties to the court action.

Damages must be paid to the plaintiff by the defendant.

Who is the defendant?

The defendant is the person or organisation that is being accused of defamation by the plaintiff.

Note – limitation period

In each state and territory, there is limitation period (the amount of time you have to start legal action) of up to one year from the date of publication of the defamatory material.

Under the uniform defamation laws, the court may extend the period in which to start an action to a maximum of three years. This extension will only be granted in limited circumstances – for example, where the publisher can't be identified, or the plaintiff was not aware of the publication within one year.

The short limitation period for defamation claims is another reason why you should seek legal advice as soon as possible.

The 2021 changes to the law (which apply in NSW, Victoria, Queensland and SA) introduced the '**single publication rule**' for electronic publications.

This rule means the date of the first online publication will be treated as the date from when the limitation period is calculated (unless the manner of any subsequent publication is materially different from the original publication). Any defamation claim must be brought within one year of the first time the defamatory material was published on the internet.

Element 1 – the subject matter has been published to a third party

The subject matter must be published to at least one person other than the plaintiff. For example, a person can't be defamed by a letter which only they receive and which is not published to a wider audience.

Publication is defined very broadly.

Publication can include, but is not limited to:

- spoken words, for example during a radio broadcast or television program
- written or printed materials, including emails, social media posts, blogs and websites
- online reviews
- drawings and cartoons
- paintings
- poetry, and
- live theatrical performances

Element 2 – the subject matter is about the plaintiff

For a defamation claim to be successful, the plaintiff must prove that they were identified in some way by the publication. For example, their name might have been used, or their photo might have been published together with other defamatory remarks.

The plaintiff does not need to have been named to be identified. In some cases, describing the characteristics or identifying features of a person may be enough to show that they were identified.

Case example – identification by pseudonym

In *Roberts-Smith v Fairfax Media Publications Pty Limited* (No 41) (No 41) [2023] FCA 555 the plaintiff was identified in the first publication by the pseudonym, 'Leonidas' being a reference to their tall physical stature.

A statement targeting a group may be capable of identifying an individual if that group is small enough.

Element 3 – the subject matter conveys defamatory meaning about the plaintiff

A communication is considered defamatory if it causes others to think less of the plaintiff or lowers the plaintiff's reputation in the eyes of the people who see or read the publication. This can occur if the publication disparages the plaintiff, causes other people to shun or avoid the plaintiff, or subjects the plaintiff to hatred, public ridicule or contempt.

Some defamatory statements may be overtly untrue and damaging of a person's reputation. Examples could include publishing a social media post containing harmful and disparaging lies about a person or describing an organisation's treasurer as a criminal or a thief.

Making statements that insinuate or imply certain meanings ('imputations') may also be defamatory, even if only some readers know the context to understand the implied meaning.

Imputations can arise from the literal meaning of words, 'reading between the lines', or a combination of what is published and what the readers already know. It's important to establish the context in which a defamatory communication is made.

The key consideration is whether the plaintiff's reputation would be injured in the mind of an 'ordinary reasonable person'.

The ordinary and natural meaning of the words are established by asking:

- what is the meaning of the words used? and
- is the meaning of the words defamatory?

Element 4 – the subject matter causes, or is likely to cause, serious harm to the reputation of the plaintiff

Following the 2021 changes to the law, in NSW, Victoria, Queensland and SA, a plaintiff must also prove the 'serious harm' element. This means the plaintiff must prove the publication of the defamatory material has or is likely to cause serious harm to the reputation of the plaintiff. For a corporation, it must establish it suffered serious financial loss.

The amendment creates a threshold to reduce the number of defamation claims that are brought to court and ensure the claims are sufficiently substantive to justify the use of the court's resources.

Who can be defamed?

Defamation is a personal right of action. This means any living person can sue for defamation. The action will be successful if the elements discussed above are established to the civil standard (on the balance of probabilities) and there are no defences available.

Defamation claims can't be made if publications are about:

- deceased persons (note that in Tasmania, the legislation does not specifically exclude deceased persons)
- a class of people (note the caution box below), or
- public bodies, including local government authorities or other government authorities

The uniform defamation laws limit the ability of corporations to sue for defamation.

Note – corporations

The only corporations that can sue for defamation are not-for-profit corporations (not including local government or public authorities) and corporations that employ fewer than ten people, provided in each case that the organisation is not an entity associated with another corporation.

For-profit corporations can pursue other legal avenues if defamatory material is published. For example, they could pursue the common law cause of action of 'injurious falsehood' (which has slightly different elements).

If the material identifies individuals, such as the employees or board members of an organisation, those people could also attempt to make a claim for defamation in their individual capacity. It's therefore important to be aware of the risks of making controversial or potentially damaging statements about corporations, as well as individuals.

Caution

A 'class of people' can't be defamed. However – a statement targeting a group may still be defamatory of a person in that group if the group is small enough that its individual members can be reasonably identified.

Case example

The plaintiffs, Capilano Honey Ltd and Dr Ben McKee (the CEO of Capilano Honey), brought a claim against the defendant, Shane Dowling.

They alleged Dowling posted material on a website, as well as on Facebook and Twitter, that harshly and untruthfully criticised Capilano Honey and McKee.

Capilano Honey, one of Australia's largest commercial honey manufacturers, sued for injurious falsehood, while McKee sued for defamation. Capilano Honey could not sue for defamation as it's not a not-for-profit organisation, nor a natural living person, and has more than 10 employees. McKee was able to sue for defamation as he is a natural living person, despite being CEO of Capilano Honey.

Capilano Honey and McKee were ultimately successful in their claims against the defendant.

Capilano Honey Ltd v Dowling (No 4) [2021] NSWSC 264

Who can be sued for defamation?

Anyone involved in the creation, publication or dissemination of the defamatory material can be sued for defamation, including a not-for-profit organisation.

If an employee has published defamatory content in the course of their employment, an organisation may be held 'vicariously liable' for the actions of its employees. This means the organisation assumes the responsibility of the employee if the employee was acting within the scope of their employment in publishing the defamatory material.

Liability for defamation that arises from the actions of volunteers is a complex area of law that differs between each state and territory.

The **phase 2 reforms** introduced the concept of a 'digital intermediary', defined as a person or entity who provides or administers the online platform on which defamatory material is published, but who is not the original author or poster of that material. This definition captures social media platforms including Facebook, Instagram and X (formally Twitter). Digital intermediaries can be sued for defamation, but as discussed below, there is a specific defence available to them.

Case example – subject matter in hyperlinks

In *Google v Defteros* [2022] HCA 27, Google produced results for searches of Defteros' name that included a hyperlink to an article published on a newspaper's website that contained defamatory material about Defteros.

The High Court held that Google was not liable for defamation in respect of the subject-matter contained in search result hyperlinks because Google did not approve the writing of defamatory matter for the purpose of publication nor contribute to any extent to the publication.

Case example – comments made on an organisation's Facebook page

In *Fairfax Media Publications Pty Ltd v Voller [2021] HCA 27*, the High Court considered whether Fairfax Media Publications was responsible for comments posted by other parties on its Facebook page.

The defamation case was started by Dylan Voller who was abused and mistreated in the Northern Territory's Don Dale Juvenile Detention Centre. Fairfax Media Publications covered his story and posted news articles on their Facebook page. Users of the Facebook page left insulting comments against the articles. The articles themselves were not defamatory and Fairfax Media Publications didn't write the comments, approve them or read them before they were posted.

Voller took legal action against the Fairfax Media Publications arguing he was defamed by comments made by third-party Facebook users who posted comments.

The High Court held that Fairfax Media Publications (the publisher):

- encouraged and facilitated the publication of comments by Facebook users, and
- was responsible for 'publishing' the comments made on its Facebook page by Facebook users

This case highlights that defamatory material does not necessarily have to be posted or authored by the publisher, but if it encourages and facilitates the publication of defamatory statements on its social media pages by other users, it's just as liable.

For more information about the liability of organisations and their volunteers, refer to our national volunteering guide.

Defences

If the defamatory statements or imputations are proven by the plaintiff, the defendant can raise defences to defeat the defamation claim.

Some of the available defences are set out below. This is not a complete list of defences.

Always seek legal advice when defending a claim for defamation

Defence of truth

It is a defence to a defamation claim if the defendant (the person being accused of publishing defamatory material) can prove that the defamatory statements or imputations are true or are substantially true.

It is not easy or cheap to establish this defence as extensive evidence is required to prove the truth or substantive truth of the alleged defamatory imputations.

Defence of absolute privilege

Previously, the defence of absolute privilege was available when matters of a parliamentary body, or of an Australian court or tribunal are published in the course of proceedings.

Since the implementation of the phase 2 reforms, the defence of absolute privilege now extends to provide a complete immunity for defamatory publications made to police acting in their official capacity. The intention is to remove a common barrier to the reporting of misconduct.

Defence of qualified privilege

This defence exists at common law and in the uniform defamation laws.

The defence of qualified privilege operates when someone proves they have a moral, legal or social duty to communicate defamatory information they honestly believe to be true to a recipient with an interest in receiving the defamatory information. The uniform defamation laws add the requirement that the conduct of the defendant in publishing the matter must be reasonable in the circumstances.

If the plaintiff can establish that the defendant had a malicious intent to cause the plaintiff harm, this will defeat the qualified privilege defence.

Typical instances of defamatory communications protected by qualified privilege are, for example, where a defendant has provided an employment reference or answered questions asked by the police.

Case example – defence of qualified privilege

In *Leyonhjelm v Hanson-Young* [2021] FCAFC 22, Senator Sarah Hanson-Young brought defamation proceedings against a former senator, David Leyonhjelm.

Hanson-Young claimed Leyonhjelm had defamed her in four separate publications. The judge in the first hearing held that the publications conveyed three imputations: (1) Hanson-Young was a hypocrite for claiming all men are rapists despite having sexual relations with men, (2) Hanson-Young had, during the parliamentary debate, made the claim that all men are rapists, and (3) Hanson-Young is a misandrist, because she claimed all men are rapists. The judge found Hanson-Young had been defamed by Leyonhjelm and rejected Leyonhjelm's defence of qualified privilege, awarding Hanson-Young damages of $120,000.

On appeal by Leyonhjelmn, the Full Federal Court held the primary judge was correct to reject Leyonhjelm's defence of qualified privilege. The Full Court found that Leyonhjelm had not proved that his conduct in publishing the defamatory matter was reasonable. The Full Court also agreed with the primary judge's reasoning that Leyonhjelm acted with malice, which would have defeated the defence of qualified privilege, had it been successfully made out.

The Full Court also held it was not a breach of parliamentary privilege for a party to prove, as a fact, that certain things were said in parliament when proof of that fact is relevant to an issue in the proceeding, provided that proof does not contravene laws regarding parliamentary privilege.

Case example – defence of qualified privilege

In *Read v Gitman* [2023] NSWDC 330, the plaintiff (the chair, secretary and treasurer of the owners committee of a small residential apartment building) started defamation action in relation to three emails published by the defendant (the strata manager) to unit owners, tenants and managers about the plaintiff's conduct of strata matters.

The imputations claimed by the plaintiff included that the plaintiff was incompetent, dishonest, reckless and mismanaged funds.

In defence of the claim, the defendant strata manager asserted that the emails were published on occasions of qualified privilege (being the upcoming annual general meeting of the owners corporation strata committee).

The court found that the defendant established that the publications were published on an occasion of qualified privilege, but that defence was defeated by the defendant's malice (mainly, the defendant's knowledge of the falsity of the contents of the emails) in publishing the three emails.

Defence of honest opinion

The defence of honest opinion in the uniform defamation laws (which is similar to the defence of 'fair comment' at common law) requires the defendant to prove that:

- the matter was an expression of opinion, not a statement of fact, and
- the opinion is related to a matter of public interest and is based on material that is substantially true

It's also a requirement that the comment be 'fair' – meaning a fair-minded person would be able to honestly express such an opinion on the same factual material.

Defence for digital intermediaries

A new defence to the publication of defamatory material is available to digital intermediaries if they can prove they:

- have an accessible complaints process for removal of content (for example, an email address or complaints form)
- have received a written complaint which meets the statutory requirements, and
- took reasonable steps to prevent access to the defamatory content either before the complaint was received or within seven days of receipt

Triviality

Previously, under the uniform defamation laws, triviality was a defence if the defendant could prove that the circumstances of the publication were such that the plaintiff was unlikely to sustain any harm.

However, the introduction of the new mandatory 'serious harm' element has abolished the triviality defence.

Instead, claims which fail to establish serious harm to reputation (including at the 'concerns notice' stage – see below) may be dismissed even at early stages of the court action. In this way, the burden of the triviality defence has shifted to the plaintiff to establish the serious harm to its reputation.

Innocent dissemination

The defence of innocent dissemination is intended to protect those who publish material created by someone else. This defence requires the defendant to prove they did not know and would not have known, with the exercise of reasonable care, that the publication was defamatory. This defence may be used by people and organisations such as television broadcasters, copying services and book sellers.

The defence will be unsuccessful if the defendant was notified the material was defamatory and ignores it. The defendant must take all reasonable steps to remove the defamatory material as soon as they become aware it is defamatory.

Public interest

The public interest defence was introduced as part of the 2021 changes to the law (which apply in NSW, Victoria, Queensland and SA).

Similar to the defence of qualified privilege, the public interest defence is designed to help protect media organisations and journalists who have published material they believe to be of public interest.

A defendant can rely on this defence if they can prove the matter concerns an issue of public interest, and the defendant reasonably believed that the publication of the matter was in the public interest. When considering this defence, the court may consider certain factors.

Case example – defences of truth, qualified privilege and triviality

In *Wilson v Bauer Media* (Ruling No 3) [2017] VSC 311 (31 May 2017), Wilson claimed:

- Bauer Media published a series of defamatory articles that depicted her as a serial liar, and
- she had suffered injury to her feelings, credit and reputation and had suffered loss and damage

It was held that the articles were defamatory and Bauer Media's defences that the imputations were substantially true, or their publication was in circumstances of triviality or protected by qualified privilege were rejected.

The court awarded Wilson $650,000 in general damages, including aggravated damages, and $3,917,472 in special damages for Wilson's lost opportunity for new screen roles by reason of the defendant's publication.

While the award of general damages was subsequently reduced to $600,000 and the aggravated damages award wasn't upheld after an appeal by Bauer Media, the judgement and the damages award is a warning to publishers to diligently investigate and fact-check stories.

Concerns notices

The 2021 changes to the law (which apply in NSW, Victoria, Queensland and SA) introduced a requirement that the proposed plaintiff serve a valid concerns notice before starting any defamation court action (proceedings).

A plaintiff can't start defamation proceedings unless:

- a concerns notice has been served on the proposed defendant (publisher) in respect of the matter concerned
- the imputations to be relied on in future proceedings are set out in the concerns notice, and
- the applicable period for an offer to make an amends has lapsed

A valid concerns notice must:

- be in writing
- specify the location where the published matter can be accessed (for example, if it's a webpage, provide the URL) and wherever practicable, provide the publisher with a copy of the published matter
- give detailed information about the imputations of concern (example below), and
- inform the publisher of the 'serious harm' caused to the plaintiff's reputation

Failure to properly detail the serious harm to reputation in the concerns notice could cause later court action to fail or be dismissed.

The proposed defendant (publisher) may give the proposed plaintiff a written notice (**Further Particulars Notice**) requesting that the proposed plaintiff provide further reasonable specified information.

The proposed plaintiff has 14 days (or further agreed period) to comply with a Further Particulars Notice, failing which they are taken not to have given a concerns notice at all.

Defective concerns notices can't be retrospectively perfected. Instead, court action (proceedings) will be dismissed and the plaintiff will have to start again by issuing a fresh and compliant concerns notice.

Apart from adverse costs ramifications, the requirement to serve a fresh concerns notice may push the plaintiff over the short, 12 month limitation period – especially since the plaintiff can't start proceedings for twenty-eight days from service of a valid concerns notice.

Apologies and offers to make amends

The uniform defamations laws and the 2021 changes to the law (which apply in NSW, Victoria, Queensland and SA) focus on resolving defamation matters quickly without having to go to court.

Ways to avoid court action include apologies and offers to make amends.

Apologies

A potential defendant, faced with a claim for defamation, may consider apologising or recanting (take back) the defamatory statement.

An apology doesn't necessarily constitute an admission of guilt and is not necessarily relevant in determining the fault or liability for a defamatory publication. It can be the quickest and cheapest form of resolving the matter.

Offer to make amends

The publisher of a defamatory publication may also make an offer to make amends to the aggrieved person. This is an offer to fix (or correct) the defamatory statement.

If they are going to make an offer to make amends, the publisher must make the offer within 28 days of being served or presented with a '**concerns notice**.'

The publisher can't make an offer to make amends they have already serviced a defence in a legal action brought by the aggrieved person against the publisher.

But a publisher (defendant) may argue that the plaintiff's failure to accept a reasonable offer to make amends is a defence to defamation proceedings.

An offer to amend must be made in writing and the wording must make it clear that it is intended to be an offer to make amends.

The offer must include:

- an offer to publish a reasonable correction of the defamatory material
- details of the reasonable steps the publisher will take to tell other people who've been given the publication that the publication may be defamatory, and
- an offer to pay expenses incurred by the aggrieved person before the offer was made and the expenses reasonably incurred in considering the offer

The offer may also include other measures to compensate harm suffered including publishing an apology, paying compensation, or details of any corrections or apologies made before the date of the offer. While not strictly compulsory, these matters will be relevant to any future consideration of the reasonableness of the offer by a court if the plaintiff's failure to accept the reasonable offer is relied on as a defence by the publisher (defender) in court action.

Caution

Since the phase 2 reforms, digital intermediaries are permitted to make offers to make amends which do **not** include an apology, clarification or correction, where such actions are not possible or appropriate in the circumstances

If the offer to make amends is accepted by the aggrieved person, the aggrieved person can't continue with an action for defamation even if the offer to make amends was limited to a particular defamatory imputation.

Under the uniform defamation laws, if the aggrieved person doesn't accept a reasonable offer to make amends, the publisher can use this failure to accept the offer as a defence to a defamation action, if they can show that:

- they made the offer as soon as practicably possible after they became aware of the defamatory material
- they were ready and willing to carry out the terms of the offer, and
- the offer was reasonable

Note – under the 2021 changes to the law

Under the 2021 changes to the law (which apply in NSW, Victoria, Queensland and SA), a potential plaintiff can't start defamation proceedings unless the potential plaintiff has given a compliant concerns notice to the publisher.

If the potential plaintiff has given the potential defendant a concerns notice that details the defamatory imputations and the 28-day period to make an offer to make amends has passed, the potential plaintiff may start defamation proceedings against the publisher. This is a compulsory step for a potential plaintiff, before lodging the claim.

The court may grant permission for proceedings to start before the end of the 28-day period, but only if starting the proceedings after that period would contravene the limitation period, or it is just and reasonable for the court to grant permission.

Other powers of the Court

Under the phase 2 reforms, the Court also has the power, with notice, to order non-parties to proceedings including digital intermediaries to take access prevention steps. These are actions which prevent or limit defamatory material from being published or republished.

Damages

Damages are awarded by the court to the successful plaintiff for damage to their reputation, hurt feelings and economic loss. As a general rule, the more widely the defamatory material was circulated and the more serious the harm to the plaintiff's reputation caused by the publication, the higher the award of damages will be.

The publisher (defendant) can provide evidence to try and mitigate the damages for the publication of the defamatory material. This may be evidence that the publisher has apologised, published a correction, or the plaintiff has already recovered damages for defamation in other proceedings about the same imputations made by the publisher.

As of 1 July 2024, the maximum damages that can be awarded for non-economic loss (loss for hurt feelings and damages reputation) is $478,500 in NSW (this amount is adjusted annually to keep pace with inflation). The maximum is only to be awarded in a most serious case.

There is no cap on an award of damages for economic loss (for example, damages for loss of income) – this is determined on a case by case basis by reference to evidence of actual economic loss suffered as a direct result of the publication.

Minimising the risk of publishing defamatory material

If your organisation posts blogs, uses social media, broadcasts podcasts or publishes information to the public, potentially defamatory imputations could be conveyed in these publications.

It's a common misconception that defamation claims can be avoided by simply not mentioning a person's name. As noted above, if the imputation the defamatory material conveys concerns an aggrieved person who is identifiable regardless of whether their name is mentioned, and the ordinary, reasonable person could identify that, the material can be defamatory.

Your organisation's defamation risk management strategy should include:

- having appropriate policies in place and training employees and volunteers on these policies
- updating policies regularly to capture changes to defamation laws
- training employees and volunteers to:
  - consider a communication piece as a whole, including titles, headlines and accompanying images
  - express statements, where appropriate, using the language of opinion rather than the language of fact, and
  - avoid using highly emotive or speculative language, and
- conducting publication reviews before information is published

If your organisation publishes a statement that it knows to be true, it's still important to make sure you have evidence to substantiate the statement.

If your organisation's activities involve publishing material that puts you at risk of a defamation claim, you may wish to consult a lawyer to review material before it's published and to get advice on managing the risks of a potential claim.

Increased risks for organisations with social media accounts

The increased influence of and ease of access to social media has made it easier to publish defamatory material. As a result, there are increased risks for organisations with social media accounts.

It's important for an organisation to be aware of what is being said about it on social media, and whether anything posted to social media platforms is defamatory.

Posting on social media are subject to the same defamation, anti-discrimination and intellectual property laws as other publications, such as newspapers. There is also the added complexity that other people will post comments on your social media sites.

For more information about social media and your organisation, see our webpage on social media.

What if someone claims you have defamed them?

Being served with a concerns notice or having a defamation claim made against you or your organisation can be daunting and stressful.

If you've been served a concerns notice:

- immediately seek legal advice, noting the timeframes for an offer to make amends

Remember

- there are non-litigious options available to a publisher accused of publishing defamatory material, but the timeframe for accessing those options is short

What if you believe someone has defamed your not-for-profit organisation?

If you believe someone has defamed your not-for-profit organisation:

- take note of the relevant timeframes for claims of defamation discussed above
- save copies of the defamatory material (for example, by taking screenshots of Facebook posts and downloading copies, with publication dates clearly marked)
- consider whether the publication satisfies the elements for defamation and the publisher may be able to rely on one of the defences outlined above
- seek legal advice

Remember:

- strict timeframes apply for making a claim for defamation, and
- under the 2021 changes to the law (which apply in NSW, Victoria, Queensland and SA) a concerns notice must be given to the publisher before any proceedings can start as a first step