

DEFAMATION LAW FACT SHEET FOR JOURNALISTS

This is a summary guide of defamation for journalists, setting out what the plaintiff needs to prove and how a journalist/media defendant can defend their story. It also includes some practical considerations for journalists to consider prior to publication to reduce risks.

Defamation law is complex, so this is nothing more than a brief overview. If a publication is likely to bring a threat of defamation, then seek legal advice.

What is defamation?

The law of defamation allows a person (and some companies), to sue and be awarded compensation for damage to their reputation. A person has one year from the date of publication to bring a defamation claim (referred to as the Limitation Period).

Defamation in a nutshell for journalists

If a journalist publishes a story, they (and their editor/publisher/newspaper/broadcaster) can be sued for defamation if a person's (the plaintiff's) reputation has been damaged. The plaintiff has to prove certain elements – that the journalist (and publisher) published the story (even if it is just to one other person) and that the plaintiff is identified in the story. In most States/Territories the plaintiff has to prove that they have suffered serious harm.

The plaintiff has to state (plead) the meanings they say the story conveyed. To defend a claim, the journalist/publisher must prove the truth of the defamatory meanings in the story or have another defence (for example fair and accurate report of a public document/public proceedings or honest opinion).

Who can sue for defamation?

- Living people
- Small companies – companies with fewer than 10 employees (and is not related to another corporation as subsidiary or parent)
- Not-for-profit entities, including charities.

Who cannot sue for defamation?

- Deceased people – a deceased person (or rather their estate) cannot sue for defamation.
- Large companies – companies with 10 or more employees cannot sue for defamation.
- Government bodies, local councils and public authorities.

Practical Tips

- Even if a company cannot sue, individuals within the company may be able to sue if they are identifiable and any criticisms in the story apply to them.
- There are also other legal actions that can be taken. For example, a large company could sue for injurious falsehood.

What the Plaintiff must Prove: The four elements of defamation

1. Publication
2. Identification
3. Defamatory meaning
4. Serious Harm (except WA)

1. Publication to another person

The first element of a claim is publication. The plaintiff must prove the material was published to at least one other person by any means – written, verbally, pictorially. Even a gesture or an emoji could be defamatory.

2. Identification of the plaintiff

The second element of a claim is identification – the plaintiff must prove they are identified in the publication, either:

- expressly, by name or photograph, or
- by inference, where there are facts which allow people (even a small group of people) to work out who is being referred to.

Practical Tips

- **Not naming** – it is often a good risk strategy to not name a person (where naming is not important to your story) as often people are far less likely to sue if their name is kept out of a story, particularly for lower-level criticisms. But this is purely a practical risk strategy. People can still sue if they are identifiable to others (or even one person) that knows them.
- **Small groups** – where your story identifies a small group of people then it's possible that each of them may be able to sue. E.g. if you reported Constable Smith of a particular police station broke the law and there were 2 officers with that name at the station, then both could sue. It is often better to be more specific and narrow it down to the person in question or give less details making it so broad it could not be narrowed down to a person or small group of people.

3. Defamatory meaning

In general terms, any allegation which could affect someone's reputation among ordinary citizens is defamatory.

The plaintiff must prove the publication conveyed a meaning (called an 'imputation' or often referred to as the 'sting') that would make others think less of them.

Many statements have more than one meaning – a literal meaning and an inference conveyed when reading between the lines. Even if every line in a story is true on its own, a journalist/publisher may be sued if the story conveys defamatory meanings to ordinary people reading between the lines.

Practical Tips

- **Repeating statements of others** – every repetition of a defamatory statement is actionable. It is not a defence to say you are just repeating what your interviewee said, or what has been published by other media.
- **Hints at wrongdoing** - Consider whether your story hints at any wrongdoing or other criticism/sting. Can readers read between the lines to glean another meaning? If so, can you prove the truth of such meanings, or do you have another defence to all the inferences in your story?

4. Serious Harm

In all states and territories other than WA, the plaintiff also has to prove that the publication has caused, or is likely to cause, serious harm to their reputation.

Defences

The main defences relevant to journalists are:

1. Truth
2. Fair and Accurate Reports of public proceedings/documents
3. Honest Opinion
4. Public Interest Publication

There are also other defences including innocent dissemination, qualified privilege and political discussion ('Lange qualified privilege').

1. Defence: Truth

It is a complete defence to a defamation claim if the defendant can prove, on the balance of probabilities, all meanings contained in the story are true. This will include the direct or literal meanings as well as meanings which may be inferred or arise by innuendo (the meanings conveyed when readers read between the lines).

To establish truth at court the defendant needs:

- Witnesses who saw or heard the plaintiff or events in question, demonstrating the truth of the allegations. Hearsay (i.e. what a person heard another person say) or rumours generally cannot be used to prove truth.
- Original documents and also someone who can verify their authenticity in court.

Practical Tips

- **Confidential Sources and off the record comments** – these are useful as a starting point but if a source will not agree to give evidence, journalists will need to find another source who will come to court (who must also have direct evidence demonstrating truth).

2. Defence: Fair and accurate reports of public proceedings/public documents

Fair and accurate reports of proceedings of public concern and public documents are protected against an action for defamation.

‘Proceedings of public concern’ can include open court hearings, parliamentary sessions, local council meetings and AGMs of publicly listed companies.

‘Public documents’ can include:

- Documents tabled in Parliament.
- Documents published by a parliamentary body.
- Court judgments.
- Other court documents if they are available for inspection.

Do not assume that other court documents are available for inspection and therefore a public document (for example if a party gives you a court document).

You need to be sure the document is available for inspection and the safest way is to obtain the document from the court registry.

- Statutory authority documents that are available for inspection.
- Documents that are issued by the government for the information of the public.

Practical Tips

- **Attribute the public document/public proceedings:** It is important to ensure the defamatory statements are attributed to the public document/public proceeding. E.g., ‘Court documents state...’, ‘the court heard...’ or ‘the report published by the Department found that...’
- **Emails and statements from spokespersons:** Do not assume that an email from a spokesperson at a department answering your specific questions is a public document under the Defamation Act. That probably would not fall under the exemption of a government document issued by the government for the information of the public. Press releases or reports published on government department websites would fall under this exemption.
- **Leaked government documents:** a leaked government document will not be a public document because it has not been issued by the government for the information of the public.

3. Defence: Honest Opinion

It is a defence to publish a defamatory opinion if it is an expression of opinion rather than a statement of fact and it is related to a matter of public interest. It also must be based on provably true facts which are either set out in the publication, widely known, or contained in public documents/public proceedings which are referred to in the story.

Practical Tips

- State the facts on which the opinion is based in the story.

4. Defence: Public Interest Publication

It is a defence to publish defamatory material if it can be proved it concerns an issue of public interest, and the defendant *reasonably believed* the publication of the material was in the public interest. This defence is not available in WA (as at September 2025).

The court may consider factors like the seriousness of the defamatory imputations, the extent to which the publication distinguishes between suspicions, allegations and facts, the sources of the information, including the integrity of the sources and steps taken to verify the information in the material.

Practical Tips

- **Right of response:** Always try to seek a right of response from anyone in your story who may argue they have been defamed and ensure that you have given them a reasonable time to respond. It may be hard to run a public interest defence if you have not done this because a court may find you have not taken reasonable steps to verify your story.

Links to Resources

The Arts Law website: Defamation Law:

https://www.artslaw.com.au/images/uploads/Defamation_law_%28REPLACES_BOTH_PRE_AND_POST_2006_VERSIONS%29_.pdf

The Law Handbook Victoria: <https://fls.org.au/law-handbook-temp/rights-activism-and-fair-treatment-at-work/defamation-and-your-rights/what-is-defamation/>

The Law Handbook Queensland: <https://queenslandlawhandbook.org.au/the-queensland-law-handbook/your-rights-and-responsibilities/defamation/defamation-what-you-need-to-know/>

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This Fact Sheet is current to November 2025. It is general in nature and should not be relied upon as legal advice.

Author: Vanessa Bateup, ABC Legal Pro Bono Program Manager.