

Understanding the Uniform Defamation Laws

If a comment has been made that brings you into contempt, disrepute or ridicule, and injures your reputation it is likely to be defamatory and you should contact us for advice.

The relevant New South Wales legislation pursuant to which the defamation proceedings are brought is the Defamation Act 1974. Further, the common law principal is long established, in "New South Wales as a general rule it is illegal, under the law of defamation to publish about a person anything which is likely to cause ordinary decent folk in the community, taken in general, to think less of him." (Gardiner v John Fairfax & Sons Pty Limited (1942) 42 SR 171 at 172).

The introduction of the Uniform Defamation Law became effective generally on 1 January 2006. The advantage is that the Defamation laws in each state are substantially the same. There is no impediment if you have been defamed in VIC, QLD, WA, SA, NT, ACT or TAS, proceedings can be brought in the State or Territory in which the harm has its closest connection. The Uniform Defamation Law has capped general damages at \$250,000 and can be exceeded if the circumstances of the publication justify increasing the amount of damages. Further, you are entitled to claim special damages for economic loss, (for example in situations where you have lost business opportunities and/or wages) and costs.

It is important to note the following:

Limitation period

Prima facie the limitation period is one year from date of publication, although courts have a discretion, in appropriate circumstances, to extend that for an additional two years, ie, up to a total of three years from date of publication. The discretion takes account of various factors such as reasons for delay and any prejudice to the defendant if an extension is granted.

Must have Publication

Publication may be made by means of communication, orally, in writing or by conduct. Publication is a bilateral act in which one party, the publisher makes information available to another party and the other party has material available for perusal and comprehension. Publication must be proved to at least one person other than yourself.

Two issues arise:

(a) Do any imputations arise out of the publication; and For example:

1. The plaintiff is a suspected terrorist.
2. The plaintiff is incompetent.
3. The plaintiff is a bully.
4. The plaintiff is a paedophile.
5. The plaintiff is a criminal.

(b) If the imputations are conveyed are they defamatory.

Both questions need to be determined according to the standards of the ordinary reasonable persons, that is, the ordinary reasonable reader, listener or viewer.

Defences

There are a number of defences available to the producer of the defamatory material. Such defences include:

- The imputations are substantially true;
- Qualified privilege;
- That the defamatory material was published on occasion of absolute privilege;
- The matter was an honest opinion;
- Innocent dissemination; and

- The matter complained of was trivial.

Are Australian defamation laws restrictive (that is are the laws stacked against the publisher?)

Yes as compared to the United Kingdom and The United States of America, Australia's defamation laws are well defined & comprehensive therefore placing a high level of care on the publishers.

Who will pay the cost of an action for defamation?

The court will award costs in favor of the winning party, which means that the majority of the winning party's fees are the responsibility of the losing party.

About the Author

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