



EDO-NQ FACTSHEET SERIES

HOW TO DUCK DEFAMATION AND SLIP 'SLAPP' SUITS

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HOW TO DUCK DEFAMATION AND SLIP 'SLAPP' SUITS

This factsheet is intended as a plain English guide to a particular area of law. It is not legal advice and is not intended as a comprehensive examination of the legislation. Whilst all care has been taken in its preparation, it is not a substitute for legal advice as legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

Introduction

Defamation law has generally reflected the broader legal system ... where those with the power are able to protect their reputation or freeze criticism but economically-disadvantaged people have no true redress.

New defamation laws applied in Queensland from 1 January 2006, with the introduction of the new *Defamation Act 2005* (Qld). Similar legislation was introduced by each State in Australia around the same time. Uniform defamation laws apply across the country – there are no longer large differences in the tort (or civil wrong) or the defences available to it around Australia.

Active community members must be able to effectively use the media through press releases, comments on television and radio, and by writing and disseminating newsletters and campaign material to convey their views and opinions.

Activists must be familiar with defamation law to be able to protect themselves and their organisations and to save time, energy and money.

What is defamation?

The new Act does not define the tort of defamation. Definitions vary from jurisdiction to jurisdiction, as do community expectations and defences such as free speech. At its simplest it is a false published statement that subjects an individual to hatred, ridicule or contempt.

Not all criticism of, or disagreement with, people is defamatory. You only defame somebody when you publish something which lowers their reputation in the minds of ordinary people who hear, read or see the publication.

If you publish a “*defamatory matter*” about someone then they will have a *cause of action* against you (and be able to sue you) for damages. The person allegedly defamed must be identifiable from the defamatory material published. In suing you they will not have to show that any special damage has been caused to them or their reputation. Of course, there are defences available to a *publisher of defamatory matter(s)*, and they will be dealt with below.

What is 'Publication'?

"*Publication*" includes spoken word, signs or gestures and delivering or exhibiting written words to any person other than the person allegedly defamed.

A "*defamatory matter*" is any material by which a person is likely to be injured in the person's trade or profession, or that injures a person's reputation or causes that person to be shunned or avoided.

Who can sue for defamation?

The law of defamation protects individual reputation. The law assumes that all people are of good character until the opposite is proven. So, generally, you defame when you identify a specific person (and that person must be alive!).

Corporations and public organisations such as councils and government departments cannot sue for defamation.

Not-for-profit corporations and those with less than 10 full-time employees can sue – as can individuals within organisations.

This means that a defamatory attack on 'the chemical industry' for poor standards in carcinogenic side-effect research is not defamation.

What defences are available?

Some of the defences or lawful excuses for publishing defamatory matter are:

1. the material published is *true*;
2. absolute protection against liability for statements by Judges and witnesses in Court and for speeches made by Members of Parliament in Parliament;
3. qualified protection if a person publishes in *good faith*, (i.e. not activated by ill will, and reported in the manner usually used for news publication), a report of court proceedings, public meeting or Parliamentary proceedings.
4. qualified protection for publication of an honest opinion about, for example, the results of court proceedings or about the conduct of public servants or about the conduct of people who take part in public affairs. This must be based on 'proper material', for example material subject to qualified or absolute privilege or public documents.

In addition, chapter 6 of the *Information Privacy Act 2009* provides a number of defences against claims for defamation or breach of confidence for State officials providing access to documents required or permitted to be provided under that legislation.

What is a 'SLAPP' suit?

Some developers run 'SLAPP' Suits (Strategic Lawsuits Against Public Participation) with poor prospects of success to stop criticism of their projects.

How can I avoid a 'SLAPP' suit?

You cannot rule out the possibility of defamation suits against you or your group entirely, However if you follow certain tips then you can both reduce the chance that you or your group will be sued for defamation, and also be in a better position to defend the suit if it occurs.

1. Ensure your group has insurance so that the group and members are covered if there was a defamation action against the group or a member acting for the group. Insurance might appear expensive; however it is ethical to protect a spokesperson for the group from huge court damages awarded against them.
2. Decide who your spokesperson is on a particular issue. Make sure everything that person says or writes on the issue is checked by a second responsible person before it goes out.
3. Try to get issues out into the public arena by a method protected from liability for defamation. For example, ask a Member of Parliament to ask questions in the Parliament.
4. Get a copy of the *ABC All-media Law Handbook* on defamation for around \$10 and read it.

If you are threatened with a defamation action

5. If you receive a threatening letter from a solicitor, do not panic. Write back straight away saying that you are obtaining legal advice and will respond within a defined period, for example two weeks after the date of the letter.
6. Obtain legal advice from a local solicitor, or for public interest environmental matters, ring the Environmental Defenders Office for help. While obtaining legal advice, do not repeat the statement complained of as this might aggravate the situation. Do not give the other side any information they do not know, such as how many leaflets were published or who in the group worked on them, as they might use it against you. If you are insured you may need to notify your insurer.
7. With your lawyers, seriously consider an apology or an offer of amends to the other side to settle the case and avoid the stress and expense of Court. Few people can afford the time or expense of defending themselves.

Further information

While we have limited resources, often we can give you quick advice over the phone or direct you to someone who may help on a free or reduced rate basis.

USEFUL CONTACTS

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To become a member of the Environmental Defenders' Office of Northern Queensland, or for more information about factsheets and legal advice, please contact us at edong@edo.org.au or on 07 4031 4766. Our web address is www.edo.org.au/edong