



Environmental Defenders Office

Understanding Defamation in Queensland

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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What is this factsheet about?

This factsheet provides an outline of the current law relating to defamation in Australia.

Key Points

The key points that environmental organisations need to be aware of are:

- You or your group are entitled to express your opinion on developments and other activities that you think will harm the environment.
- You do, however, need to be careful of what you say or write, as there are repercussions if you damage another person's or a company's reputation without good reason or justification.
- Most defamation in Queensland is dealt with under legislation although general case law (decisions of judges) still applies.
- There are several defences to defamation available which might protect you.
- Groups may now be liable for the 'publication' of defamatory comments made by third-parties on their social media sites, such as Facebook or Instagram.

For more detailed information on defamation in relation to public interest environmental matters, contact the [EDO](#) or seek advice from a private solicitor.

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What is defamation?

Defamation is the ‘publication’ of ‘matter’ that conveys a meaning that is likely to lead an ordinary reasonable person to think less of a person.¹

‘Publication’ is broadly defined and can include newspapers, magazines, television, radio, the internet, letters, pictures, speeches and gestures. A recent High Court decision has found that ‘publication’ can include comments made by third-parties on a social media site, such as Facebook.²

Any means of communicating something to a person can be a defamatory ‘matter’. This includes, but is not limited to, spoken or written words, signs, signals, gestures or visible representations.³

Generally speaking, material will be defamatory if it may:⁴

- injure the reputation of an individual by exposing them to ridicule, contempt or hatred;
- cause people to shun the individual; or
- lower the individual’s estimation by right thinking members of society generally.

¹ *Radio 2UE Sydney Pty Ltd v Chesterton* [2009] HCA 16 at [5].

² *Fairfax Media Publications Pty Ltd v Voller* [2021] HCA 27.

³ *Defamation Act 2005 (Qld)* Sch 5 and the definition of “matter” (**‘Defamation Act’**).

⁴ *Sim v Stretch* [1936] 2 All ER 1237 at 1240.

Which laws apply?

The [Defamation Act 2005 \(Qld\)](#) (**Defamation Act**) and the common law (i.e. decisions of Courts) together govern the law of defamation in Queensland. However, other defamation laws in other jurisdictions may also apply.

Defamation can occur in more than one location and can occur multiple times, although only one action can be brought for multiple defamatory representations within one matter.⁵

Defamation is considered a ‘tort’ (a civil wrong, as opposed to, say, a crime).⁶ However, intentional defamation is also a crime under the [Criminal Code Act 1899 \(Qld\)](#), carrying a maximum penalty of three years imprisonment.⁷

If a defamatory representation is published in multiple jurisdictions, the law that applies will be determined by the jurisdiction in which the most damage has occurred.⁸ This will depend on factors such as the place where the plaintiff resided at the time of publication, where the material was published in Australia, and where the harm was caused to the plaintiff.⁹

Proving defamation in court

Defamation is a tort of ‘strict liability’. This means that it is not a defence to argue that you did not intend to damage a persons reputation, or that you acted with reasonable care.¹⁰ The responsibility of proving defamation lies with the person who thinks they have been defamed. In a court action, this person would be called the ‘plaintiff’. If certain elements (backed up by appropriate evidence) are satisfied, the person who published the defamatory matter, the defendant, may be liable to compensate the plaintiff for the damage caused to their reputation.

When bringing an action of defamation in Queensland, the plaintiff must first issue a ‘concerns notice’ prior to commencing proceedings.¹¹ The notice must specifically detail the defamatory representations the plaintiff alleges were published, and must follow certain format requirements.¹² Once the notice has been provided, the publisher of the alleged defamatory content will have 28 days to make an offer of amends.¹³

⁵ Defamation Act s 8.

⁶ Defamation Act s 6.

⁷ [Criminal Code Act 1899 \(Qld\)](#) s 365.

⁸ Defamation Act s 11(2).

⁹ *Ibid* s 11(3).

¹⁰ *Dow Jones & Co Inc v Gutnick* [2002] HCA 56 at [25], citing *Lee v Wilson & Mackinnon* (1934) 51 CLR 276.

¹¹ Defamation Act ss 12A, 12B.

¹² *Ibid* s 12A(1).

¹³ *Ibid* s 14(2)(b).

The plaintiff must establish that the publication of defamatory matter has caused or is likely to cause serious harm to their reputation. This is known as the 'serious harm element'.¹⁴ A Judge, rather than a jury, will then determine whether the serious harm threshold has been met.¹⁵

Generally speaking, for an action in defamation to be successful the plaintiff must prove the following:

- The material was communicated by the defendant to a third person other than the plaintiff. Communication to just one person other than the plaintiff is sufficient to prove this element.¹⁶
- The material identifies the plaintiff.¹⁷ There is no need for the plaintiff to be expressly named. It is enough that the publication is made to persons with knowledge of other facts which would reasonably enable them to identify the plaintiff.¹⁸
- The material contains matter that is defamatory, regardless of whether it was intentionally published or not.¹⁹
- The plaintiff's reputation has been damaged by the defamatory material in the eyes of a reasonable person in the community.²⁰

Who can be sued for defamation?

Any natural person or legal entity including local governments, companies and incorporated associations who contributed to the defamatory material can be sued for defamation. This can include the broadcaster, the journalist, the producer of the program, an editor of a newspaper or other publication, and any entity that reproduces the defamatory material, e.g. Google or Facebook.²¹

N.B. A **legal entity** such as an **incorporated community group** that issues a defamatory media release or social media post can be sued.

An **environmental activist** who hands out a leaflet that contains defamatory material can be sued, as well as the **author**.

¹⁴ Ibid s 10A(1).

¹⁵ Ibid s 10A(3).

¹⁶ *Toomey v Mirror Newspapers Ltd* (1985) 1 NSWLR 173, citing *Pullman v Hill & Co Ltd* [1891] 1 QB 524 at 527.

¹⁷ *Sungravure Pty Ltd v Middle East Airlines Airliban SAL* (1975) 134 CLR 1 at 23.

¹⁸ *Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632 at 639-640.

¹⁹ *Webb v Bloch* (1928) 41 CLR 331 at 363.

²⁰ *Reader's Digest Services Pty Ltd v Lamb* (1982) 150 CLR 500 at 505, 506.

²¹ In *Duffy v Google* (2015) 125 SASR 437, Google was the publisher of defamatory material as Google's auto-complete results either published, republished or directed users towards comments that were harmful to Duffy's reputation.

A **group** that maintains a public social media page can be sued for defamatory comments made on that page by **third-parties**.

Who can sue for defamation?

Generally speaking, any natural person can sue for defamation.

A corporation cannot sue in relation to defamatory matter about the corporation unless they are:²²

- A not-for-profit corporation (that is not a public body); or
- A for-profit corporation that employs fewer than 10 people, is not related to another corporation and is not a public body.

Defences to a defamation action

While the [Defamation Act](#) provides remedies to people who are ‘defamed’,²³ it also acknowledges that there should not be ‘unreasonable limits’ on individual and group rights to freedom of expression and on the discussion of matters of public interest and importance.²⁴ As a result, there are several defences to defamation available under the Defamation Act.²⁵

The defences most relevant to environmental and community groups are:

Justification

This defence applies if it can be proved the defamatory material published is substantially true.²⁶

Absolute privilege

Absolute protection against liability for defamation will apply to statements made in a court of law, and to speeches made by Members of Parliament in Parliament.²⁷

Public documents

This defence will apply if it can be proved the defamatory material was contained in a public document.²⁸ This includes, but is not limited to, reports by a parliamentary body, a judgment by a court, government documents and records open to the public.

²² Defamation Act s 9(2).

²³ For remedies, see Defamation Act ss 34-39.

²⁴ Ibid s 3(b).

²⁵ Ibid ss 24-32.

²⁶ Ibid s 25.

²⁷ Ibid s 27.

²⁸ Ibid s 28.

Fair report of proceedings of public concern

A person will have a defence if they prove the material was, or was contained in, a fair report of any proceedings of public concern.²⁹ This includes, but is not limited to, public proceedings of a parliamentary body, an international organisation of any countries, a court and a local government body.

Honest opinion

People are free to express an honest opinion provided the matter was an expression of the defendant's opinion (as opposed to a statement of fact), the opinion was a matter of public interest, and the opinion was based on proper material.³⁰ If there are facts you are relying on, we suggest you reference these in the material published.

Public Interest

A person will have a defence if they are able to prove that the matter concerns an issue of public interest, and that they reasonably believed that the publication of the matter was in the public interest.³¹ In determining whether this defence applies, the court will take into account seriousness of the defamatory material, the source of the information (including integrity of sources), and the extent to which the matter distinguishes between suspicions, allegations and proven facts.

Scientific or academic peer review:

A person will have a defence if they are able to prove that the matter was published in a scientific or academic journal, the matter relates to a scientific or academic issue, and an independent review of the matter's scientific or academic merit was carried out before the matter was published.³² This defence can be defeated if the plaintiff is able to prove that the defamatory matter was not published honestly for the information of the public or for the advancement of education.

Qualified Privilege

A person will have a defence if it can be shown that the matter was published without malice by a person with a duty or interest to make the publication, and the recipient of the publication had a corresponding duty or interest to receive it.³³ This defence can be defeated if the plaintiff is able to prove that the publication was made with malice. To be made with malice, there must have been an improper motive or purpose for publishing the material which was 'operative' in the making of the publication.

²⁹ Defamation Act s 29.

³⁰ Ibid s 31.

³¹ Ibid s 29A.

³² Ibid s 30A.

³³ Ibid s 30.

Freedom of political communication

The defence of qualified privilege has been extended by the implied freedom of political communication to apply to publications about government and political matters.³⁴ This covers discussions of government or politics at all levels, criticism of the views, performance, conduct and capacity of members of Parliament, discussions of the workings of Australian courts and tribunals, and discussions of matters concerning the United Nations or other countries. The publication must be made without malice, and must be reasonable.

Defamation and social media

Defamation law distinguishes between primary (or intentional) publication, and subordinate (or inactive) publication. Broadly, this means the person who speaks or writes the original defamatory material is liable. However, it also means social media administrators who control or assent to comments being posted on their sites may be liable for publishing defamatory material.

Case law in Australia has now established that administrators of social networking sites may be held liable for defamatory statements made by third parties on their site.

N.B. The High Court of Australia recently held that Fairfax Media, Nationwide News and Australian News Channel were publishers of comments made by third-parties on their public Facebook pages.³⁵ As a result, groups that maintain a public Facebook page may now be liable for defamatory comments made on that page by third-parties.

Time limitations

Generally speaking, under the Defamation Act an action must be brought within one year from the date of the publication of the defamatory material.³⁶

Defamation can occur in more than one location and can occur multiple times. However, to limit the endless opportunities created by the internet, a 'single publication rule' was created.³⁷ Under this rule, the limitation period commences from the date on which the publication was uploaded for access or sent electronically to a recipient, rather than the date it was downloaded.

³⁴ *Lange v Australian Broadcasting Corp* (1997) 145 ALR 96 at 117.

³⁵ *Fairfax Media Publications Pty Ltd v Voller* [2021] HCA 27.

³⁶ *Limitation of Actions Act 1974 (Qld)* s 10AA.

³⁷ *Ibid* s 10AB.

Checklist to avoid being sued for defamation

	Consider insurance so that you or your group (and other members) are covered if a defamation action is instigated.
	Decide who your spokesperson on a particular issue is. Make sure everything that person says or writes on the issue is checked by the management committee or board of your organisation before it is publicly released or conveyed to a third party. Consider running your written or verbal prepared points past a lawyer.
	Publish a media policy for your group which identifies who may speak on behalf of the group. Individuals may express individual views, but they would not necessarily reflect the views of the group. When members join your group, provide a copy of the media policy to members. Publish the media policy on your website.
	Remove any direct or implied reference to a particular individual, unless a defence clearly applies. If you have not identified a particular person, consider whether there is information in your publication or statement that implies reference to any one individual. For instance, if you make reference to “The manager” that is likely to be taken to be directed to a particular person.
	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 Parliament.
	Carefully check your facts (and sources for those facts) and give well informed opinions based on those facts. Your statements should reflect this. For example, “the report released last week suggests the proponent has not complied with XYZ...”
	Keep copies of all press releases, material on which it was based, and record where, to whom and when it was sent.
	Closely and swiftly monitor third party comments on your social media, and delete any potentially defamatory comments as soon as possible. Consider turning off comments altogether to avoid potential liability for third party comments.

Checklist if you are threatened with a defamation action

	<p>If you receive a threatening letter do not panic. Write back immediately saying that you are obtaining legal advice and will respond formally within a defined period, for example two weeks after the date of the letter.</p>
	<p>Obtain legal advice from a solicitor or, for public interest environmental matters, contact the Environmental Defenders Office for advice on how you should respond.</p>
	<p>While obtaining legal advice, do not repeat the statement complained of in the public domain, or discuss the matter with other parties (e.g. journalists) as this might aggravate the situation. Of course you can talk to your lawyers.</p>
	<p>If your organisation is insured, check to see if your policy covers defamation actions against you or your group.</p>
	<p>After taking advice, if you think that you have defamed someone, consider making an 'offer to make amends' in an effort to settle the matter. The procedures required for an offer are outlined in sections 12 to 19 of the Defamation Act. NB: this process must be initiated within 28 days.</p>
	<p>Consider making an 'apology' in an effort to mitigate any damages you might be facing. The person accusing you of defamation might also agree to withdraw Court proceedings against you if you agree to formally apologise.</p>