

# Understanding Defamation: For community groups and environmental activists

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*This factsheet is for general information purposes and is not legal advice. Important 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.*

## What is this factsheet about?

This factsheet explains what defamation is, what defences are available, and what to do if you are concerned that you or your group might be sued.

The **key points** you need to be aware of are:

- You or your group are entitled to express your opinion on developments and other activities which 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 deliberately damage another person'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; and
- There are several defences to defamation available which might protect you.

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

## Contents

1. About defamation
2. Who can be sued for defamation?
3. Who can sue for defamation?
4. Defences to a defamation action
5. Time limitations
6. Checklist to avoid being sued for defamation
7. Checklist if you are threatened with a defamation action
8. Useful contacts and further information

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## 1. About defamation

### *What laws apply?*

Both the *Defamation Act 2005* (Qld) (the **Defamation Act**) and the common law (i.e. decisions of Courts) together govern the law of defamation in Queensland.<sup>1</sup> Defamation is considered a ‘tort’ (a civil wrong, as opposed to, say, a crime). Other types of torts include nuisance and negligence.

Whilst the Defamation Act gives remedies to people who are ‘defamed’, 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 in the public interest.<sup>2</sup>

### *How is defamation defined?*

The Defamation Act does not define defamation, so we need to look at what case law has said. Generally speaking, material will be defamatory if it could:

- Injure the reputation of an individual or company 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.<sup>3</sup>

**IMPORTANT!** Defamatory material includes spoken words, signs or gestures, delivering or exhibiting written words (including on the internet), or any other means by which something may be communicated to a person other than the person defamed. These general rules apply regardless of the State in which the alleged defamation takes place.

### *Proving defamation in Court*

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, you may be liable to compensate them for the damage caused to their reputation. Generally speaking, for an action to be successful the plaintiff must prove:

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<sup>1</sup> *Defamation Act 2005* (Qld) s6(2).

<sup>2</sup> *Defamation Act 2005* (Qld) s3.

<sup>3</sup> See the English case of *Sim v Stretch* [1936] 2 All ER 1237 at 1240.



1. The information was communicated by the defendant to a third person other than the plaintiff:
  - a. communication only to the plaintiff is not enough; and
  - b. communication to just one person other than the plaintiff is sufficient to prove this element,
2. The material identifies the plaintiff:
  - a. 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, and
3. The information/material contains matter that is defamatory, regardless of whether the material was intentionally published or not:
  - a. the plaintiff must be able to prove their reputation has been damaged by the defamatory material in the eyes of a reasonable person in the community.

## 2. 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 as a defendant.

This can include the broadcaster, the journalist, producer of the program, and editor of a newspaper or other publication.

**Example:** The committee members of a community group who authorise the issuing of a defamatory media release can be sued, in addition to the person who wrote the media release.

**Example:** an environmental activist who hands out a leaflet that contains defamatory material can be sued for defamation, as well as the person who wrote it.

## 3. Who can sue for defamation?

Generally speaking, any person can sue for defamation. However, according to the Defamation Act, a corporation cannot sue in relation to the publication of defamatory matter about the corporation.<sup>4</sup>

However, *not-for-profit* corporations (which aren't a public body) can sue for defamation, as can small for-profit corporations that employ fewer than 10 people, are not related to another corporation and aren't a public body.<sup>5</sup>

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<sup>4</sup> Defamation Act 2005 (Qld) s9.



## 4. Defences to a defamation action

There are several defences available under the Defamation Act:<sup>6</sup>

**Justification:** This defence applies if you can prove the defamatory material published is substantially true.<sup>7</sup>

**Contextual truth:** The defendant will not be liable if they can prove the publication contained one or more other imputations that are substantially true. This will only be available where you can show that because of the substantially true comments, the reputation of the plaintiff has not been further harmed.<sup>8</sup>

**Absolute privilege:** Absolute protection against liability will apply to statements made in a court of law, and for speeches made by Members of Parliament in Parliament.<sup>9</sup>

**Public documents:** This defence will apply if it can be proved the defamatory material was contained in a public document. 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.<sup>10</sup>

**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.

Public proceedings include those of a parliamentary body, international organisations and conferences, international and domestic courts and tribunals, sport/recreation/trade associations, Ombudsman's reports and other proceedings that are treated as proceedings of public concern.<sup>11</sup>

**Qualified privilege:** This defence will apply if the defendant can prove:

- The recipient of the material has an interest or an apparent interest in the information;
- The material is published to the recipient in the course of giving them information on that subject; and
- The conduct of the defendant in publishing that matter is reasonable in the circumstances.<sup>12</sup>

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<sup>5</sup> According to the *Defamation Act 2005* (Qld) s9, a corporation includes: "any body corporate or corporation constituted by or under a law of any country (including by exercise of a prerogative right), whether or not a public body." A Public body means "a local government body or other governmental or public authority constituted by or under a law of any country." In determining the number of people a company employs, part-time employees are to be taken into account as an appropriate fraction of a full-time equivalent.

<sup>6</sup> See *Defamation Act 2005* (Qld) Part 4, Division 2.

<sup>7</sup> *Defamation Act 2005* (Qld) s25.

<sup>8</sup> *Defamation Act 2005* (Qld) s26.

<sup>9</sup> *Defamation Act 2005* (Qld) s27.

<sup>10</sup> *Defamation Act 2005* (Qld) s28.

<sup>11</sup> *Defamation Act 2005* (Qld) s29.

<sup>12</sup> *Defamation Act 2005* (Qld) s30.



**Honest opinion:** Persons 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 this opinion is based on proper material.<sup>13</sup>

**Innocent dissemination:** This defence applies where the defamatory material was disseminated by people who distribute publications, but have no control over the publications' content. The defendant must have been unaware that the publication was defamatory, and this lack of knowledge must not have been due to the defendant's negligence.<sup>14</sup>

**Triviality:** There is a defence to an action where the circumstances of the publication of the defamatory material were such that the plaintiff was unlikely to suffer any harm.<sup>15</sup>

The laws relating to defamation must be read subject to an implied freedom of political communication relating to publications concerning government and political matters. Certain material that is fair and accurate, concerning matters of public interest, may be immune to defamatory proceedings. The defendant must not believe the publication was untrue, or be made with malice.

## 5. 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.<sup>16</sup>

## 6. 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.
	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..."

<sup>13</sup> *Defamation Act 2005 (Qld)* s31.

<sup>14</sup> *Defamation Act 2005 (Qld)* s32.

<sup>15</sup> *Defamation Act 2005 (Qld)* s33.

<sup>16</sup> *Limitation of Actions Act 1974 (Qld)* s10AA.



	Keep copies of all press releases, material on which it was based, and record where, to whom and when it was sent.
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## 7. Checklist if you are threatened with a defamation action

	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.
	Obtain legal advice from a solicitor or, for public interest environmental matters, contact the <a href="#">Environmental Defenders Office</a> for advice on how you should respond.
	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.
	If your organisation is insured, check to see if your policy covers defamation actions against you or your group.
	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.
	Consider making an 'apology' in an effort to mitigate any damages you might be facing. <sup>17</sup> The person accusing you of defamation might also agree to withdraw Court proceedings against you if you agree to formally apologise.

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<sup>17</sup> *Defamation Act 2005* (Qld) s38(1)(a).



## 8. Useful contacts and further information

### **Environmental Defenders Office (Qld) Inc.**

Ph: 07 3211 4466

Fax: 07 3211 4655

Post: 30 Hardgrave Road, West End 4101

Email: [edoqld@edoqld.org.au](mailto:edoqld@edoqld.org.au)

Web: [www.edoqld.org.au](http://www.edoqld.org.au)

### **Other free information**

*Queensland Public Interest Law Clearing House (QPILCH):*

<http://www.qpilch.org.au/resources/factsheets/Defamation.htm>

### **Legislation**

*Defamation Act 2005 (Qld)*

[http://www.austlii.edu.au/au/legis/qld/consol\\_act/da200599/](http://www.austlii.edu.au/au/legis/qld/consol_act/da200599/)

